

INTERESTED PARTIES MEETING

RE: RULES OF PRACTICE

OCTOBER 18, 2006

SACRAMENTO, CALIFORNIA

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MR. LAMBERT: Good morning. Thanks for participating in the interested parties process for the nth time today on the rule -- Board of Equalization Rules for Tax Appeals project.

Your participation is appreciated and we hope we can improve the Board's regulations.

This morning we're here to discuss the Board's Rules for Tax Appeals as a result of a 15-month long effort to compile the Board's current procedures for handling all types of appeals, make them more efficient and understandable; addresses various procedural issues and determine which procedures are best suited for being promulgated as regulations.

I'm not going to recount the various chapters again here, but I will say today we have -- I guess now there's five handouts and there's a couple more.

We have the rules in their present form. The written comments submitted by Mr. Lenny Goldberg. Written comments submitted by Mr. Joseph Vinatieri. Staff responses to the interested parties' comments. And redacted -- other than the written comments being distributed today for the first time -- and redacted hearing summary prepared for the Business Taxes oral hearing just to give you an idea of what's included if you don't -- haven't seen one before.

1 There's also another document -- can I see
2 that? It's a letter on Board Member Betty Yee's
3 letterhead dated October 18, 2006 with various comments.

4 And they're making copies now so we'll have
5 those in a few minutes.

6 The specific -- we're going to discuss all the
7 matters which are -- which have been raised by -- by
8 people today. And if anyone wants to raise any new
9 issues, we'll discuss them. However, the primary thing
10 we are here to discuss is the rules with respect to
11 communications with Board Members and disclosure and
12 related topics.

13 First, I think we ought to introduce ourselves.
14 We'll start with the people at the table. And my name
15 is Robert Lambert. I'm the Acting Assistant Chief
16 Counsel for the Tax and Fee Division of the Legal
17 Department.

18 MR. VINATIERI: I'm Joe Vinatieri with Bewley,
19 Lassleben & Miller in Whittier.

20 MS. MANDEL: Marcy Jo Mandel, State
21 Controller's office.

22 MR. DAVIS: Kenneth Davis, staff of Franchise
23 Tax Board.

24 MS. BORGMAN: Susan Borgman, staff of Franchise
25 Tax Board.

26 MR. LANGSTON: Bruce Langston, Franchise Tax
27 Board.

28 MS. RUWART: Carole Ruwart, Board's Legal

1 Department.

2 MR. HELLER: Bradley Heller, Board's Legal
3 Department.

4 MS. WAGGENER: Michele Waggener,
5 PricewaterhouseCoopers.

6 MR. KAMP: Steve Kamp, of Board -- Board Member
7 Betty Yee's office.

8 MR. LO FASO: Alan Lo Faso, Board Member Betty
9 Yee's office.

10 MR. SCHUTZ: Chris Schutz, John Chiang's
11 office.

12 MR. MANCIA: Fran Mancina, MBIA.

13 MR. BOYD: Doug Boyd, HDL Companies.

14 MR. CUNNINGHAM: Jim Cunningham, Kahn, Soares
15 and Conway.

16 MS. ZIMMERMAN: Sarah Zimmerman, SEIU 1000.

17 MR. GOLKA: Joshua Golka, SEIU 1000.

18 MS. KINKLE: Sherrie Kinkle, SBE - Property
19 Taxes.

20 MS. LANDEROS: Rebecca Landeros, Board
21 Proceedings.

22 MS. RICHMOND: Joann Richmond, Board
23 Proceedings Division.

24 MS. WURST: Catherine Wurst, Board Proceedings,

25 MR. ASAY: Jim Asay, Sempra Energy.

26 MR. MICHAELS: Peter Michaels from Cooper,
27 White and Cooper.

28 MS. CASAZZA: Teresa Casazza, with Cal-Tax.

1 MS. PENNINGTON: Margaret Pennington, with
2 Board Member Bill Leonard's office.

3 MR. FILLMAN: Donald Fillman, Board Member Bill
4 Leonard's office.

5 MR. GOLOMB: Abe Golomb from Sales Tax
6 Reduction Specialists.

7 MR. LAMBERT: Is anybody -- is anybody there on
8 the -- via phone yet? Hello.

9 I guess not.

10 MS. RUWART: Do we know that that --

11 MR. LAMBERT: Yeah.

12 MS. RUWART: -- phone connection is live?

13 Okay. Thank you.

14 MR. HELLER: With that, once again my name is
15 Bradley Heller. I'm an attorney in the Board's Legal
16 Department. And just to remind everybody, we're -- we
17 do have -- we are transcribing the -- the discussion
18 today. And so, if you can introduce yourself when you
19 speak and also speak clearly so that we can clearly
20 record your -- your comments, we'd appreciate that.

21 And as Mr. Lambert said this morning, we're
22 going to begin by discussing communications with Board
23 Members and then disclosure, and then we can move to
24 additional topics -- I believe there were some that were
25 raised by Mr. Vinatieri. And then any other additional
26 topics that anyone would like to comment on.

27 Our goal today is to try to finish up by 12:30
28 if at all possible. I believe there was interested

1 parties that really didn't appreciate our last
2 interested parties meeting that ran past lunchtime. So,
3 our -- we're trying to accommodate that if that's at all
4 possible today.

5 However, we will stay later if we need to, and
6 I'm available by -- for written comments, also
7 telephone, e-mail after the meeting and for several
8 weeks to come, as well, if you have additional comments
9 that you don't have time to submit today or that you
10 think of later, as well.

11 With that, on the communications with Board
12 Members issue, staff has proposed codifying the Board's
13 long-standing policy of permitting communications with
14 Board Members at any time. That's Section 5000.5015.1
15 of Chapter 5.

16 And at the September 27th Board meeting, Mr.
17 Lenny Goldberg of the California Tax Reform Association
18 made some comments on that provision and suggested --
19 and has submitted one of the handouts today, which is
20 his comments on the provision where he suggests that we
21 add language that would direct the Board Members to
22 refrain from private discussions with the parties in
23 cases about matters pending to the case, and endeavor to
24 make sure that all information and issues under
25 adjudication are a matter of public record and subject
26 to public scrutiny. And there's a few other additional
27 requirements.

28 But, essentially -- if -- if there's someone

1 here from the California Tax Reform Association, I would
2 like to address those comments before -- before I
3 can respond. This would be an opportunity.

4 MR. LAMBERT: Anyone else, for that matter?

5 MR. HELLER: We'll move right ahead. Staff has
6 provided responses to Mr. Goldberg's comments from the
7 September Board meeting in the comment matrix that was
8 provided this morning. And also responses to
9 alternatives that were originally submitted for the
10 same -- same section by the Franchise Tax Board's Chief
11 Counsel. And also SEIU Local 100.

12 MS. MANDEL: Starting on page 19.

13 MR. HELLER: Public comments.

14 MS. MANDEL: I think so.

15 MR. HELLER: Let's see, is that correct?

16 MR. VINATIERI: Should be 19.

17 MR. HELLER: Yes. The comments -- or the
18 comments and responses begin on page 19 of the handout
19 with response to comments matrix.

20 And -- but moving ahead, essentially staff
21 did -- did review the law and doesn't believe that
22 communications with Board Members are prohibited by law
23 and also determined that implementing any kind of
24 restrictions like that would be very difficult to do.
25 And does not intend to recommend that the Board adopt
26 any restrictions like that.

27 Really, beyond responding in that respect, if
28 somebody would like to comment on -- on Mr. Goldberg's

1 suggestions at all at this point, this would be a good
2 time to do so.

3 MR. LAMBERT: Or our responses.

4 MR. HELLER: Or our responses. Or if anybody
5 has additional comments or suggestions regarding that
6 provision.

7 MR. MICHAELS: Just -- just one point of
8 clarification. Would this extend likewise to staff and
9 to Board lawyers and to --

10 MS. MANDEL: You mean --

11 MR. MICHAELS: It says "parties. Does that
12 mean everybody?

13 MR. VINATIERI: Are you referring to -- to Mr.
14 Goldberg's comments --

15 MR. MICHAELS: Mr. Goldberg's proscription
16 here, does that mean that Board staff is foreclosed from
17 having contacts with Board Members?

18 MR. HELLER: Well, I think -- I can't speak for
19 Mr. Goldberg.

20 MS. MANDEL: Maybe somebody could --

21 MR. LAMBERT: Maybe the union --

22 MR. HELLER: -- would like to?

23 MR. LAMBERT: -- representatives today could
24 address that. Or the FTB.

25 MS. ZIMMERMAN: This is Sarah Zimmerman, SEIU
26 Local 1000.

27 My understanding is that Mr. Goldberg is in
28 Asia right now, which is why he wasn't able to be here

1 today, which is why he submitted his comments in
2 writing.

3 You know, it's obviously up to this -- this
4 process, I'm sure after he sees other comments that come
5 out of today's meeting there will be more submitted --
6 he would submit more, to that effect.

7 I think part of the discussions that we had on
8 this language is there has been a lot of back and forth.
9 I think some of it has moved to a little bit of a
10 theoretical on some of the problems, potential problems
11 with the suggestions on both sides. And that there's
12 been some discussion about actually looking at
13 regulations in -- from other agencies that have
14 attempted to address this issue, and it hasn't -- there
15 was some suggestion about looking at, for example, PUC
16 regulation or other regulation, and I haven't seen that
17 move forward, at least in looking at some other examples
18 with -- where some of this has been implemented before
19 rejecting it wholeheartedly for this Board.

20 So, one suggestion I have would be for staff
21 and other interested parties -- I would, you know, offer
22 that we would submit some language, as well, from the
23 other agencies so that there could be one more concrete
24 discussion about what some regulations like this might
25 look like before it was rejected wholeheartedly on the
26 basis of being unwieldly in the abstract as opposed to
27 looking at other agencies where it's actually been
28 implemented.

1 MR. HELLER: Well --

2 MR. MICHAELS: And so, where are you about
3 contacts with staff?

4 MS. ZIMMERMAN: I think that in the previous
5 discussion we've had on this there was a definition that
6 related to that that had to do with -- depending on how
7 they were acting, there was some discussion about a
8 lawyer, lobbyist or staff and they were acting on behalf
9 of the Member as opposed to answering like technical
10 questions or things like that.

11 So, I think in this room my recollection was
12 that there was that level of interpretation of what
13 staff would be -- but then it was -- there was some --
14 again, I think it would be useful to look at other
15 policies.

16 MS. MANDEL: Sarah --

17 MS. ZIMMERMAN: Can I look at my notes?

18 MS. MANDEL: I think what Peter -- Peter is
19 trying to figure out -- this is Marcy -- I think Peter
20 is trying to figure out from this language that
21 Mr. Goldberg submitted where he talks about adjudication
22 of tax disputes, that -- that there would not be any
23 private discussions with the parties in the case; he's
24 trying to figure out, for example, in a Sales Tax case,
25 would that -- in a Sales Tax matter -- excuse me, I
26 don't want to use the word "case" -- in a Sales Tax
27 matter that's coming to hearing before the Board, does
28 this -- or if you don't know, what is your view of

1 whether the -- the length -- the preclusion of a --
2 would a private discussion, whatever that is, include
3 a Board Member or Board Member staff discussion with
4 Board of Equalization staff on that --

5 MS. ZIMMERMAN: Uh-huh.

6 MS. MANDEL: -- Sales Tax matter. That's what
7 you're asking, right?

8 MR. MICHAELS: Exactly.

9 MS. MANDEL: Yeah. So --

10 MR. MICHAELS: Or any matter. It doesn't have
11 to be Sales.

12 MS. MANDEL: Right.

13 MS. ZIMMERMAN: And I --

14 MS. MANDEL: He's just wondering if it's a
15 two-way street, I suppose, would be the --

16 MR. MICHAELS: Precisely.

17 MS. ZIMMERMAN: And I remember a -- a short
18 discussion you had previously where we were concerned
19 that there might be -- on the taxpayer's side more work
20 created for a lobbyist. It couldn't be the taxpayer,
21 him or herself, it could be a lobbyist. On the Board
22 side it would be a Board Member or staff when acting
23 directly on behalf of the Board Member as -- you know,
24 on a substantive issue as opposed to a technical issue.

25 But I think that again it's important to look
26 at other examples with elected officials or with
27 appointed officials where staff may or may not be acting
28 on their behalf about these particular regulations.

1 MR. LAMBERT: You have a question?

2 MR. GOLOMB: I'd like to respond if I may.

3 MR. HELLER: Please do.

4 MR. GOLOMB: I've been doing this type of work
5 representing -- I worked for the Board for 12 years and
6 I used to write --

7 MS. RUWART: Would you -- give your name,
8 please.

9 MR. GOLOMB: Oh, I'm sorry. Abe Golomb. I'm
10 with Sales Tax Reduction Specialists. I worked for the
11 Board for 12 years. And part of my job I worked at
12 headquarters. I wrote Board hearing summaries. And
13 I've been representing taxpayers for over 20 years
14 before the Board.

15 And this is the absolute worst suggestion that
16 I've ever seen put forth. I'm shocked that a union
17 representing employees would be supporting something
18 like this.

19 In fact, one of my clients was a union that had
20 tax trouble. Basically, in this agency as relates to
21 Sales Tax, Special Taxes, the process is entirely within
22 the agency. You have an Appeals Conference held by a
23 Board employee. A Decision and Recommendation is
24 generated. If the taxpayer does not agree with that or
25 their representative does not agree, they go forward to
26 an oral hearing before the Board of Equalization.

27 The staff of the Board Members receive from the
28 Board staff copies of the D & R and a Board hearing

1 summary. In other words, the staff, itself, provides
2 the information to the Board Members to explain the
3 case. And because the staff, itself, is doing this,
4 there's always going to be bias entering into this
5 process in favor of the staff. It cannot help but enter
6 into it.

7 Putting into codification, oh, the summary
8 should be neutral. These are written by real people.
9 Real people have biases. And it's very easy to have
10 your biases enter into these summaries. I wrote them.
11 I know how to do it. It can be done. I can make it
12 appear that it's impartial, yet favor the staff.

13 The taxpayer and their representative, unless
14 they submit a brief, the only time the Board Members
15 will hear from them is at a Board hearing. They will
16 get a total of 15 minutes to present their case, to
17 overcome all the information that has previously been
18 provided to the Board Members and their staff who
19 evaluate the case for the Board Members, from the staff
20 itself.

21 If the taxpayer or their representative does
22 not have the ability at least to interact with the Board
23 Members and their staff, and at least explain some of
24 the information regarding their case, the ability for
25 that taxpayer to receive due process will be severely
26 limited.

27 And the whole purpose of this is to provide the
28 taxpayer due process to resolve their dispute. We are

1 not here to hold tax. My sense from reading Lenny
2 Goldberg's suggestion is he's interested in holding tax.
3 He's trying to say that if a taxpayer or their
4 representative somehow interact with a Board Member that
5 that will prejudice the Board Member or the Board Member
6 staff in favor of the taxpayer.

7 I'll tell you honestly, I wish it were true.
8 Because I've interacted with the Board Members and their
9 staff. They listen to me and they don't always follow
10 and vote in my client's favor. In fact, in most cases
11 they don't.

12 But at least I have the opportunity to explain
13 to them our point of view. Under this proposal that
14 will be completely foreclosed. The staff will have the
15 bulk of the information provided to the Board Members.
16 And if you believe that the staff does not interact
17 with -- the Board of Equalization staff does not
18 interact with the Board Member staff, because they're in
19 the same building here, as you're coming down an
20 elevator it's very easy to chit-chat about a case.

21 I've spoken to former Members of the Board
22 staff administration and they point blank told me they
23 would many times get calls about cases, "Well, what's
24 going on in this case?" from Board Members or their
25 staff, giving the staff an additional opportunity to
26 lobby the Board Members or their staff.

27 But that does not occur with taxpayers or their
28 representatives. On occasion, I'll get a phone call

1 asking me for some information regarding a case I have
2 pending. But that does not occur frequently.

3 So, basically what this whole process will do
4 is limit the taxpayers and their representatives from
5 having complete due process and being able to provide to
6 the Board Members and their staff all the information
7 necessary for the Board Members to make an informed,
8 intelligent decision.

9 MS. CASAZZA: Teresa Casazza with Cal-Tax. I
10 have to really express my frustration at this meeting
11 for the lack of representation by Leonard Goldberg and
12 the California Tax Reform Association.

13 At the Board Meeting it was because of his
14 determination and his decision that this interested
15 parties meeting was called and then he doesn't show. I
16 understand --

17 MR. LAMBERT: In fairness to him --

18 MS. CASAZZA: Yeah.

19 MR. LAMBERT: -- immediately concluding that
20 meeting he said he had already booked tickets and he
21 couldn't make it.

22 MS. CASAZZA: Okay.

23 MR. LAMBERT: So, he did explain it
24 immediately --

25 MS. CASAZZA: Okay.

26 MR. LAMBERT: -- that he had a problem with
27 this exact date. It was too late to change it.

28 MS. CASAZZA: Well, is this the current

1 letter --

2 MR. LAMBERT: Yes.

3 MS. CASAZZA: -- that he provided?

4 MR. LAMBERT: That's correct.

5 MS. CASAZZA: There is no new suggestions here.

6 You know, he alluded at the Board Meeting that he did
7 not have adequate time to express his positions. We
8 thought there would be something new here.

9 This is old stuff, and it's just very
10 frustrating. And I -- I --

11 MS. MANDEL: Well, he has finally actually
12 written language, whether it's good language or not --

13 MR. LAMBERT: Right.

14 MS. CASAZZA: About he brought this up at
15 the -- at the last --

16 MR. LAMBERT: Give the devil his due.

17 MS. CASAZZA: And so, I just have to express my
18 frustration, this is old stuff. This is nothing new. I
19 feel this is a stalling tactic and I think we should
20 just move on.

21 The Board has said -- excuse me, the staff has
22 said what their view is. Everybody has expressed their
23 opinions on this matter. And I think it's time to move
24 on.

25 MR. LAMBERT: Anybody else?

26 MR. HELLER: Any other comments?

27 MS. ZIMMERMAN: One more comment. We had -- we
28 discussed at prior meetings the possibility of a small

1 taxpayer exemption. And I know there was some
2 discussion about the difficulty of defining what a small
3 taxpayer, a small business or a small -- you know,
4 individual might be that might have an exemption on some
5 of these processes on the hearing side and the -- you
6 know, some of the communication side.

7 So, I was just wondering is there an ability to
8 have some staff time or ask, you know, when we can
9 certainly try to submit some definition, but there also
10 might be some expertise on the staff side to look into
11 that and at least put forward some possible definitions.
12 If they were to move forward at some of these and there
13 was an interest in looking at small taxpayer, small
14 business exemption.

15 MS. CASAZZA: You know, if I can just comment
16 on that. Again this is Teresa Casazza with Cal-Tax.
17 This is the 8th interested parties meeting. You know,
18 this isn't the time to be stalling on what we're doing.
19 I'm very frustrated with trying to stall this process.

20 The staff has done excellent work, and I'm just
21 frustrated by -- by bringing up something like that at
22 this point. And I would really recommend we move on to
23 another topic.

24 MR. LAMBERT: I am --

25 MR. BOYD: This is Doug Boyd. Elected Board
26 and open communication with constituents kind of go
27 together. And I think that's the direction we were
28 headed in and I think staff has done a great job.

1 And that we probably hashed this out to death.

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1 MR. HELLER: Thank you. Bradley Heller with the Legal
2 Department.

3 Just to respond to your comments, Sarah, you
4 know, staff and the interested parties -- we did
5 actually discuss, you know, trying to define maybe
6 Rule 1. We actually discussed and we did create, at
7 least possibly, based on the John Davies suggestion, to
8 create restrictions on communications in appeals from
9 the Franchise Tax Board. We did discuss the possibility
10 of creating exemptions from that restriction for small
11 tax cases, possibly homeowners and renters
12 assistance. Basically, just out of the recognition that
13 there were certain areas where having these restrictions
14 certainly wouldn't benefit anybody and would only
15 continue to create additional confusion.

16 However, staff really looked into the ideas
17 themselves and the idea of implementing any type of
18 restrictions. And we really felt that we don't -- we
19 wouldn't accomplish any of the goals that the
20 restrictions are set out to accomplish if we created a
21 regime whereby staff here at the Board privately looks
22 at individual cases and makes its own determinations
23 over who the Board Members can speak with and who they
24 can't speak with. And it then gets into arguments with
25 the public over how we made the determinations that they
26 think -- in these exemptions, when -- when that's not
27 really our goal is.

28 Our goal is to smooth out the process, make it

1 easier for everybody, as opposed to creating some new
2 litigation grounds.

3 So, we didn't really think it would be fruitful
4 after looking into the issue further to start trying
5 to -- to try to say blanket the entire process at the
6 Board of Equalization and then try to carve out
7 individual areas. We figured that that would be a
8 process that could go on into -- into probably until I
9 retire, if we really wanted to honestly identify every
10 individual and then properly define each one of those
11 classes of taxpayers.

12 So, with that, though, if there are any --
13 Mr. Langston?

14 MR. LANGSTON: I have one comment. It's
15 actually a question.

16 This is Bruce Langston from Franchise Tax
17 Board.

18 You know, given the controversy about this
19 subject has staff considered deleting it from the
20 regulation? It was not in the original regulation.
21 This is one that was made up as part of this process.
22 And one of the issues that was brought up at the last
23 Board meeting is that the needed changes -- we have done
24 a lot -- we have done a lot of work, we have done a lot
25 of technical changes, we've done a lot of good,
26 legitimate changes -- shouldn't be derailed,
27 necessarily, because of this issue.

28 And so, one option that might be considered is

1 simply from -- is simply deleting this whole section
2 from this regulation and proceeding with it separately
3 if think we want to proceed.

4 MR. LAMBER: Is that an official recommendation
5 or request?

6 MR. LANGSTON: That's a suggestion. That is
7 just an interested parties comment.

8 It's not official suggestion, but it is a
9 possibility. I think Franchise Tax Board would not
10 object if it was deleted entirely and the regulation was
11 silent on this issue.

12 MR. LAMBERT: Okay.

13 MR. VINATIERI: Yeah, Joe Vinatieri, just a
14 couple of quick comments on this issue.

15 I think Mr. Boyd's correct this thing has been
16 hashed out.

17 MR. LAMBERT: Before you do that, can I ask a
18 question?

19 We just were handed a proposed revisions to
20 closed session, provisions 2.

21 MR. LO FASO: That's not relevant, that's part
22 of the Betty Yee attachment.

23 MR. LAMBERT: Oh, I see, okay.

24 Got it, I'm sorry.

25 MR. VINATIERI: Quickly, first of all, what
26 we're talking about here is the essence of
27 representative government and the fact of the matter is
28 that this is America. We have an opportunity to talk to

1 our elected officials. And I find this to be
2 undemocratic.

3 Second of all, as elected officials -- elected
4 officials are responsible to their constituents and to
5 their constituents only. And that's the beauty of the
6 California system -- unlike any other system in the
7 United States of America,. We have elected officials
8 here and there is a reason for that that was put in the
9 constitution back in 18 whatever the day the year was,
10 to treat Board of Equalization constitutional officers
11 differently than legislators, for that matter, who a
12 constituent has the right to see a legislator; to treat
13 them differently than an assessor, who is an elected
14 official; to treat them differently than a local
15 government official, which I am now and I'm wearing a
16 different hat and I see that.

17 Whatever the situation is, the elected official
18 has a responsibility to those constituents. And those
19 constituents have the right to be heard.

20 I think Mr. Golomb has made a good point about
21 the fact that when there is a summary put together
22 that -- because it's put together by human beings, there
23 is always inherent bias. I remember as Deputy State
24 Board of Equalization Member Mr. Dronenburg one time on
25 a Franchise Tax Board appeal, we had heard the case and
26 the Franchise -- or the Board of Equalization franchise
27 tax staff had a view of how the law should be developing
28 in a particular area. And the head of that group at

1 that time, since retired, came to me and said, "Here's
2 the opinion that we're going to propose to the Board
3 Members. How do you feel about it?"

4 I said, "This is completely contrary to, I
5 think, the comment you heard Mr. Dronenburg make during
6 the time that hearing took place. It's contrary to the
7 way that we think that the law should develop in this
8 area."

9 My point in saying this is that was back then,
10 that was probably about 1982, '83, somewhere around
11 then, but the point is that -- that the the Board staff,
12 in that case the State Board staff had a particular way
13 they wanted to see things go and we ended up being in
14 the minority on that particular case. And there wasn't
15 a provision at that point for doing dissenting
16 opinions -- as we will be talking about later today.

17 So, my point is that that -- that things do
18 happen, where there are differences of opinion on the
19 part of staff and it's important that taxpayers have an
20 opportunity to come forward and present the other side
21 of the situation.

22 Notwithstanding that, I think the staff here
23 has done a wonderful job and I agree with the staff on
24 this one. And the fact of the matter is this issue has
25 been under the carpet for a long time, people
26 have grumbled about it for many years, certain people
27 have brought this issue forward now, have said, "You
28 know what, we want this out."

1 And now that it's out, the staff has made a
2 determination -- and a lot of us now agree with the
3 staff determination and I would suggest that we need to
4 go forward with it, not try to sweep it back under the
5 carpet again, but put there and go with it way the it
6 is.

7 MR. LAMBERT: Okay. I would like to address a
8 few -- a couple of comments to the union
9 representatives.

10 You had mentioned a requested or thought that
11 it might be a good idea to -- for either the ear staff
12 or some interested party to look into the regulations of
13 other administrative agencies that handle appeals and
14 see what rules they have.

15 I cannot guarantee that staff will be that.
16 However, we have a PAN date of the November 9th --

17 MS. MANDEL: That's the Public Agenda Notice.

18 MR. LAMBERT: Right. And if you want to
19 provide -- thank you -- provide for those some --
20 technical talk here, I guess -- if you would like to
21 provide us any of that information, we will look at it
22 and comment on it.

23 And if you get us any information before the
24 meeting date of November 21st, the Board Members will
25 see it.

26 So that is your time constraint on that. And
27 if that's all there is on that topic?

28 MR. DAVIS: Ken Davis.

1 In reviewing the chart of -- of submissions and
2 responses, Brad, I noticed that -- this is more for
3 clarification or actually just to -- maybe you want to
4 amend the record on this, but we noticed that the Chief
5 Counsel's submission for the Franchise Tax Board John
6 Davies, has made two submissions -- one in December 13th
7 and the other was on February 28th.

8 And the February 28th one dealt with the -- how
9 the San Francisco Bay Area Conservation and Development
10 Commission operates and it had two opinions, one from
11 the Attorney General's office and one from a law firm.

12 You may want to include that in your record and
13 staff response.

14 MR. HELLER: I will.

15 MR. LAMBERT: Thank you.

16 With that, I think there's some disclosure
17 items you wanted to clarify.

18 MR. HELLER: Thank you, Bob.

19 Bradley Heller with the Legal Department again.

20 Real briefly, there were also comments made
21 regarding disclosure. MR. Goldberg essentially --
22 essentially suggested that that all of the Board's
23 information with regard to all of the tax matters be
24 disclosable to the public, I believe, was the language
25 that he recommended.

26 MR. VINATIERI: What rule are we looking at?

27 MR. HELLER: We are now dealing with
28 Sections 5000.5033 through 5000.5033.2, those are the

1 disclosure provisions.

2 MR. MICHAELS: Looks like Mr. Goldberg's has
3 this on the back side of his one page?

4 MR. HELLER: Yes. What he says is,
5 "The provision for waiver of confidentiality
6 in Franchise Tax Board cases should apply for
7 cases called for in (b)," which is all cases,
8 basically.

9 And in response to that staff has -- has
10 essentially tried to perform a balancing or weighing of
11 competing interests on disclosure issue and looked at,
12 you know, what the law allows the Board to disclose.

13 And the Board has historically and consistently
14 concluded that taxpayer information in the other
15 programs is confidential until there is a waiver of
16 confidentiality from the taxpayer. That the Board can't
17 just decide, we're going to disclose things because it
18 would be more convenient or even if we just decided that
19 the public interest in seeing it really was paramount to
20 us, it can't just be disclosed.

21 And we have looked into the waiver issue and
22 staff does believe that we have authority to conclude
23 that the hearing summary prepared for an oral hearing
24 for the Board could -- the taxpayer can waive
25 confidentiality with regard to that summary and that we
26 provided procedures to create that waiver.

27 So, the taxpayers will do that knowingly and in
28 an informed way. And we have also provided other

1 procedures for them to either submit their matters
2 without an oral hearing for decision or to request a
3 closed session to hear confidential trade secrets so
4 that their -- their interests are still protected.

5 However, the public's -- we would balance the
6 public's need to understand what happens during the
7 meetings that are conducted and during a public -- or
8 conducted during open session.

9 So, we think that that provides only the
10 information that pertains to the hearing, doesn't go any
11 broader.

12 Then, in addition, staff even went beyond that
13 to see if there was some way to look to -- to pick up
14 all of the relevant information and found that it would
15 be impossible for staff to go through an entire file,
16 say from the beginning of the audit in a sales or use
17 tax case, all of the way up to the Board hearing and
18 redact everything and make sure it only pertained to
19 information relevant to the hearing.

20 So, we think this is an efficient way to
21 accomplish both goals.

22 MS. MANDEL: Can I ask you a question because I
23 have had this -- I have the question.

24 This is -- I know I had asked a long time ago
25 that people who aren't familiar with how the Board works
26 get redacted copies of hearing summary and D & R so they
27 know what we're talking about and I'm glad that you have
28 provided this.

1 On the waiver of confidentiality, where it's
2 the hearing summary, that's going to be this this
3 hearing summary piece, right?

4 MR. HELLER: Correct.

5 MS. MANDEL: Not the D & R?

6 MR. HELLER: Just the hearing summary piece.

7 MS. MANDEL: I wanted to make sure.

8 MR. HELLER: That's correct.

9 MS. MANDEL: Okay, thanks.

10 MR. HELLER: It does not apply to D & Rs and it
11 would not be a redacted one.

12 This is redacted because currently there is no
13 waiver of confidentiality and we're even identifying the
14 taxpayer, so --

15 MS. MANDEL: And the hearing summary -- by
16 having that confidentiality waived as to the hearing
17 summary, that provides all of the information of what's
18 really going to be -- that provides the information
19 about what's going to be at issue at the hearing.

20 And so, if some -- if somebody saw something on
21 the public agenda notice and wanted the hearing summary
22 for a particular case, they'd be able to walk into the
23 Board room and have read the hearing summary and,
24 perhaps, follow the discussion better than had they not
25 read the hearing summary?

26 MR. MICHAELS: Peter Michaels.

27 The public disclosure would, I suppose, also
28 extend to the possibility of web site postings of the

1 hearing summaries?

2 MR. HELLER: That there would be --
3 confidentiality would be waived so they could be posted.

4 MR. LAMBERT: No reason not to.

5 MR. HELLER: We don't necessarily have a plan
6 to implement something like that right now, it hasn't
7 been suggested as of yet.

8 Because we're really not trying -- they don't
9 represent any of the Boards decision or anything, so,
10 they're not necessarily a good reference tool or
11 anything but --

12 MR. LAMBERT: Right.

13 MR. HELLER: -- maybe we could look for that as
14 a way to make sure that they're disseminated to people
15 who need it.

16 MR. LAMBERT: Again, the content of the things
17 on the website are things that people can look at and
18 rely upon.

19 So, I think this is -- may be contrary that.

20 MR. MICHAELS: I would be concerned. A lot of
21 times the appeals summaries are not entirely reliable,
22 just as a lot of times the petitions are not entirely --

23 MR. LAMBERT: I'm shocked, shocked, shocked
24 shocked to hear you say that.

25 MR. MICHAELS: I think it would be --
26 personally, I was -- I think it would be a -- personally
27 a mistake to have some blanket policy of posting these
28 hearing summaries without people's knowledge and

1 consent.

2 MR. GOLOMB: They signed a waiver, I assume
3 they understand.

4 MS. MANDEL: No, they don't.

5 MR. LAMBERT: The point is, it wouldn't be on
6 the website because it's not something that someone
7 should be relying upon.

8 MS. MANDEL: And you're not -- they're not --

9 MR. LAMBERT: It's not authoritative, it's not
10 something that someone should rely upon.

11 MS. MANDEL: Abe, they don't sign a waiver,
12 right?

13 MR. HELLER: No written waiver.

14 MS. MANDEL: It's just the function of --

15 MR. LAMBERT: An appeal --

16 MS. MANDEL: -- having their case to an oral
17 hearing before the Board.

18 So, you know what kind of people have all these
19 sales tax cases, what they understand or don't
20 understand?

21 I mean, they'll get something in writing that
22 explains that to them, but --

23 MR. VINATIERI: Right

24 MR. LAMBERT: It's an interpretation of law
25 that there is -- there are taxpayer -- taxpayer
26 information confidentiality statutes, you know, and then
27 to the extent to their need for confidentiality exceeds
28 the public's need to know, it becomes a privilege.

1 However, the privilege can be waived when you
2 file an appeal, particularly when you have a public
3 hearing on that appeal and the information is disclosed
4 publicly.

5 So -- but it's a legal interpretation.

6 MR. HELLER: Exactly.

7 MR. VINATIERI: But the point -- I'm sorry,
8 this is Joe Vinatieri:

9 But the point of concern is a person's right
10 and opportunity to be heard, which is guaranteed, versus
11 their right not to have information publicly disclosed
12 that would be of a detrimental nature to them or to
13 their business.

14 So we have this --

15 MR. LAMBERT: Obviously.

16 MR. VINATIERI: -- conflict.

17 MR. LAMBERT: Right.

18 MR. VINATIERI: And so, what we're trying to do
19 here is we're trying to balance that.

20 mr. LAMBERT: Right. But there's,
21 nevertheless, a public hearing requirement

22 MR. HELLER: This is Bradley Heller for Legal
23 Department.

24 We think by balancing -- we didn't just jump
25 to, we're going to do more disclosure, because that's
26 not balancing.

27 What we did is we said, if we're going to -- if
28 we're going to look at, you know, really defining the

1 scope of the waiver, then we need to look at protecting
2 the taxpayer's -- what you said, like right to be heard,
3 so, that is, a law providing the ability to submit
4 things on the record without an oral hearing still gives
5 them one ability to still be heard without -- without
6 disclosing their information to the public and also
7 providing that opportunity to have a closed session to
8 discuss confidential trade secrets and also gives them
9 an actual ability to -- if that's the type of
10 information involved -- to actually get an oral hearing
11 in the matter that does not involve the -- that could do
12 that -- the waiver of confidentiality as to that
13 information.

14 So, we think that actually it improves approves
15 the process, although it's really not exactly a change
16 in the law, it's more just defining the scope of the
17 waiver that's been out there.

18 MR. VINATIERI: I assume -- this is Joe
19 Vinatieri again.

20 I am assuming that we will be talking
21 specifically about the ability to close a hearing with
22 respect to trade secrets; is that correct?

23 MR. HELLER: Exactly, and if --

24 MR. LAMBERT: Is that one of the items in your
25 letter?

26 MR. VINATIERI: Not in mine, but I --

27 MR. HELLER: Turn to the next -- perhaps we can
28 discuss that at that time.

1 MR. VINATIERI: We can discuss it.

2 MS. CASAZZA: We're talking about, you know,
3 publishing it, publishing the appeal process summary,
4 right?

5 That --

6 MS. RUWART: The hearing summary.

7 MS. MANDEL: The hearing summary.

8 MS. RUWART: Maybe I should just -- just for
9 the --

10 MS. CASAZZA: It's not something you can rely
11 upon, but -- and, so, it's misleading to publish.

12 MR. LAMBERT: We're not going to -- I don't
13 think -- I can't speak to that, but I doubt that we
14 would recommend that it would be on the website.

15 It's invasive a little bit, it's private and
16 it's not reliable.

17 So, there's no purpose. It's not a memo or
18 memo opinion, so I think - I can't imagine staff would
19 do that.

20 MS. RUWART: Well, actually -- can I explain
21 what my understanding of what would be published.

22 You have this redacted attachment. It has 12
23 pages, it ends on page 12 of 12, but just to decode it
24 for everybody, the first four pages are what's called a
25 summary for Board hearing.

26 What that represents is by the time it's
27 finally come to hearing, the Appeals Division's
28 understanding of the remaining issues only that are in

1 dispute.

2 These are usually less or are often less than
3 the number of issues that were originally brought to the
4 Appeals Division at the time there was an appeals
5 conference. For administrative convenience, presumably,
6 when we do these electronic files we've been attaching
7 an electronic copy of the decision and recommendation,
8 which the appeals conference holder prepares relatively
9 very much earlier on in the process.

10 The taxpayer has an appeals conference and the
11 decision where they bring up all of the issues with
12 their audit or their matter and then the appeals
13 conference holder prepares a decision and recommendation
14 that covers all of those issues. Because of the time
15 lag between the hearing and also because of sometimes
16 the holding of the appeals conference holder, many of
17 the issues that are set forth in the D & R end up
18 falling out.

19 What the staff is proposing to publish in some
20 form prior to a hearing -- prior to making available
21 prior to a hearing, would be the first four pages of the
22 twelve and not the last eight pages of the twelve.

23 It's a little confusing because right now, for
24 convenience, because it's an only internal document to
25 Board Members and their staff, we just attach them all.

26 So, it looks like a twelve page document, but
27 this also may or may not give some kind of indication of
28 the difference between a decision and recommendation and

1 a hearing summary.

2 Hopefully, that's a little helpful.

3 MR. GOLOMB: This is Abe Golomb.

4 There's -- that document you have just referred
5 to, the Board hearing summary, is written by a Board of
6 Equalization staff person other than the appeals
7 conference holder.

8 And when I was a Board employee, I used to
9 write those. And what -- what the intent of that was
10 when I was writing them was to provide to the Board
11 Members and their staff a summary of the disputed
12 issues, the taxpayer's position or the representative's
13 position and the Board staff's position.

14 That is taken, basically, from the decision and
15 recommendation. And I can say that over the years in
16 representing taxpayers I've found a number of these
17 Board hearing summaries to be in error. And I've
18 brought it to the attention of the writers because their
19 name appears on it. I have also brought it to the
20 attention of the staff of the Board Members.

21 So, this is just intended to clarify for the
22 Board members and their staff the issues that will be
23 discussed at an oral hearing.

24 It is not always perfect and many times it is
25 not perfect, depending on who writes it, how good a
26 writer they are or how good an analyst they are. You
27 may get all of the information you need or you may not.

28 So, these documents have been created to assist

1 the Board Members, but the key point I think also that
2 is somehow being missed is an oral hearing before the
3 Board is de novo. In essence the Board members should
4 be looking at everything. They shouldn't just be ending
5 up looking at a summary because the law that this
6 hearing is based on calls for it to be de nova, i.e., a
7 new hearing.

8 So, these summaries are all well and good, but
9 they have severe limitations because of the fact that
10 they're summaries and that people -- Board staff people,
11 who have not been involved in the case, coming at the
12 end of the process trying to summarize these issues.

13 They may do a good job, they may not. So, some
14 of these documents have severe limitations and until
15 you're aware of that, it's really easy to fall into the
16 trap that these are all of the issues.

17 MS. MANDEL: Or these are all of the facts.

18 MR. GOLOMB: Or these are all of the facts.

19 MS. CASAZZA: You know, it's -- Teresa Casazza
20 with Cal-Tax, along those lines too, a lot [*|of]
21 times too it's my understanding that the tax reporting
22 services, like CC & H and others pick these letters up
23 and then they get published. And then there becomes
24 that misleading -- you know, deal that --

25 MR. LAMBERT: Are you talking about letters or
26 are you talking about summaries?

27 MS. CASAZZA: The summaries.

28 MR. HELLER: This is Bradley Heller of the

1 Legal Department.

2 We are aware of several publishers that have
3 picked up decisions of the Board. i know that they have
4 published letter decisions that we issue in appeals from
5 the Franchise Tax Board, which might have some similar
6 flavor to these.

7 I don't -- I know we do prepare hearing
8 summaries for appeals from the Franchise Tax Board, but
9 I'm not aware --

10 MR. LAMBERT: Does not --

11 MR. HELLER: -- of them on GH or Lexis or
12 anything like that at this point.

13 MS. MANDEL: What I have heard is the decision
14 documents, which are adopted by the Board, and sometimes
15 they have gotten hold of an actual letter that has come
16 out from Board -- that's come out when the Board has
17 voted on something, it wasn't a summary decision
18 prepared for the Board's adoption and I don't know
19 what --

20 MR. HELLER: A letter decision?

21 MS. MANDEL: Yeah, I don't know where they --

22 MR. LAMBERT: Letter decision?

23 MS. MANDEL: I don't know where they -- I don't
24 know where they got that.

25 MR. LAMBER: PRA request.

26 MS. MANDEL: Maybe. And the only issue that I
27 heard about recently was on one of, actually, the
28 Board's formal opinions, which you can rely on as

1 precedent, the two services, GH and the other one, one
2 showed it as precedential and one didn't have that
3 reference.

4 MS. CASAZZA: Distinction.

5 MS. MANDEL: And so, the person was, you know,
6 confused about whether it was formal, but I don't know
7 that if you have the hearing summaries --

8 MR. LAMBERT: No, they don't.

9 What they publish, there's two kinds of --
10 other than memo opinions on the FTB matters, there's two
11 kinds of decisions.

12 When the Board decides, there's a hearing
13 decision, which is very brief and essentially is burden
14 of proof, usually, because the Board normally does not
15 state a rational.

16 Then there's a memo decision, which is a
17 written only thing, which the Board prepares and is
18 adopted by it. Those are picked up, even though they're
19 not precedential.

20 MS. MANDEL: But your point would be if -- to
21 the extent that these then became more readily
22 available, there would be risk?

23 MS. CASAZZA: Right, right.

24 MR. HELLER: Absolutely. Bradley Heller again.

25 Staff does not intend to create a like
26 repository of hearing summaries or some place like a
27 surgical database that the public can go looking
28 through.

1 Our goal here really was to address specific
2 concerns that we heard about people who want to attend
3 public hearings and understand what the Board's
4 actually -- what the arguments in front of the Board and
5 how they're voting, what that means to them as part of
6 the public.

7 MR. LAMBERT: And under certain rules in the
8 FTB, the hearing summaries are available to the public.
9 And I've never seen any issues come up because the FTB
10 document, as soon as it hits the public file, it's
11 public record.

12 MR. HELLER: Currently.

13 MR. LAMBERT: So, they are available, I've
14 never seen one.

15 There are hearing summaries similar to this for
16 FTB matters.

17 MR. LANGSTON: I have a couple comments on
18 that.

19 I mean we -- there are a couple that I believe
20 by mistake got picked up by the tax services.

21 Also we have one case in litigation now where
22 the plaintiff has introduced a hearing summary into
23 evidence because, you know, and one of the problems is,
24 obviously, the hearing summaries are summaries of the
25 law, they're not -- you know, they're not official
26 publications of the -- of the Department.

27 They are -- and it can be misleading to the
28 public when they do get out because they're not the

1 final statement of the law.

2 Again this is probably -- just to be fair,
3 though, if you do a Lexis search or if you do a search
4 on one of the other tax services, you might be surprised
5 how many of those there are.

6 MR. LAMBERT: Yes.

7 MR. LANGSTON: And, again, I don't know how
8 they're getting them, I don't know how they get the
9 documents or the information, but every once -- when we
10 find them we tend to notify, you know, we have a process
11 to notify them and say, "Look, this is not the decision,
12 it's the hearing summary."

13 And -- but it has -- and that's going to happen
14 every time you have something that's a handout or public
15 there is -- there's the modern world, I mean once
16 something is a public -- handed out to the public, it's
17 likely that it will somehow get out there.

18 MR. LAMBERT: Fair enough.

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1 MR. HELLER: And so, anyway, to follow up, staff doesnot
2 have any intention of trying to get these things
3 published by a service, either, however anybody could
4 request them once they -- once the waiver applies. And
5 so, we would have to just track somebody if they did
6 start publishing them to make sure that they weren't
7 misused.

8 But it's definitely --

9 MS. MANDEL: No, I'll just talk to you later
10 about it. I was just kind of wondering if -- if the --

11 VOICE: I'm sorry, I couldn't hear you.

12 MS. MANDEL: I was going to talk to him later.
13 I was just kind of wondering if -- if we ought to
14 consider some type of legend on documents.

15 MR. LAMBERT: That's a great idea.

16 MS. RUWART: Yeah. Making it very clearly --

17 MR. LAMBERT: Yeah --

18 MS. RUWART: -- of this is not the decision.

19 MS. MANDEL: I mean, we do I think on the
20 summary ones, or at least we used to. It used to have a
21 legend that says --

22 MR. LAMBERT: Yeah, the hearing summaries do,
23 but FTB ones.

24 MS. MANDEL: No -- like the summary decisions.

25 MR. HELLER: Yeah, they do.

26 MR. LAMBERT: Yeah, the memo -- yeah, the memo
27 decisions.

28 MS. MANDEL: They had some sort of legends in

1 the --

2 MR. LAMBERT: The memo decisions, yeah.

3 MS. MANDEL: I mean if -- if these --

4 perhaps they're -- I don't know what the --

5 MR. LAMBERT: Maybe we never thought it was
6 needed because it's obvious; but it's not so obvious,
7 huh?

8 MR. HELLER: Right.

9 MR. LAMBERT: That's a great idea.

10 MR. HELLER: Makes perfect sense.

11 MS. MANDEL: Then if you're going to -- if it's
12 going to be publicly available, then at least it has
13 something.

14 MR. LAMBERT: And the one that says it is the
15 memoranda decision that's adopted by the Board on the
16 nonappearance calendar. Because that's the one that
17 could be mistaken. It looks like an opinion but it's
18 really not.

19 MS. MANDEL: Summary decisions.

20 MR. HELLER: Summary decisions.

21 MR. LAMBERT: Summary decisions.

22 MR. HELLER: Perfect. With that we're going to
23 continue discussing disclosure but we're going to move
24 to a slightly different topic within disclosure, and
25 that is the ability to close -- to hear certain
26 information during a closed session with regard to
27 certain Property Tax matters and Business Taxes and Fees
28 matters.

1 MR. MICHAELS: And which section are we
2 looking at?

3 MR. HELLER: We are now in Section -- I believe
4 this is 5000.5033.2. And it deals with requests for a
5 portion of a hearing during a closed session.

6 MR. VINATIERI: I'm sorry, 5033 --

7 MR. HELLER: Yeah, .2.

8 MR. MICHAELS: And you have a comment from
9 Board Member Yee and comments from Mr. Goldberg and
10 comments from several sources --

11 MR. HELLER: Correct.

12 MR. MICHAELS: -- about that.

13 MR. HELLER: Yes, and I'm quickly going to just
14 point out Mr. Goldberg's comments and staff's brief
15 response, and then I don't know -- would you guys like
16 to address these comments? I'll let Ms. Yee's staff
17 address those comments.

18 And -- but, really briefly, basically staff --
19 the Board does have authority to hear confidential
20 taxpayer information during a closed session. And staff
21 tried to define -- to utilize that authority in a way
22 that -- that's narrow so that it doesn't allow an entire
23 hearing to be closed just because there may be one or
24 two trade secrets or something that need to be
25 discussed. And we wanted to provide some sort of
26 definition for what -- for the type of material that
27 would qualify to be heard in a closed session. And we
28 wanted some -- some -- to put at least definitive

1 parameters on that.

2 So, we looked to the Code of Civil Procedure
3 and borrowed the language taken that's used for the --
4 the California Courts to issue protective orders. I
5 believe this particular provision relates to discovery
6 requests.

7 And so we actually took the exact same language
8 that applies to the California Courts and the same
9 standards that they can apply, although it's slightly
10 more narrow than the -- the California Courts because,
11 you know, there were definitely areas in there that we
12 thought would be objectionable.

13 But we basically drew that exact same standard
14 and said when there's that kind of information that
15 the -- that a California Court could prohibit from being
16 disclosed to the public, then the Board could hear that
17 information and only that information during a closed
18 session if necessary to protect the taxpayer's right to
19 confidentiality.

20 And so, we essentially created that provision
21 and in -- in addition there's a -- quite a few
22 procedural issues that come up with trying to hold a
23 closed session. And the fact that the Board -- in order
24 for the Board to make decisions they do need to meet
25 as -- with a quorum, with a regularly noticed meeting
26 and everything.

27 So, we've set it up so that the chair makes the
28 initial determination as to whether or not to close --

1 to hold a closed session. If the Chair decides to hold
2 a closed session, then at the beginning of that closed
3 session the other Board Members have the opportunity to
4 make a motion to have that hearing during an open
5 session, if they disagreed with the Chair. Then there
6 will be -- that will be a regularly noticed meeting and
7 the Board Members could then vote on that motion. If it
8 succeeds then the -- the hearing will be rescheduled so
9 that's held during an open session.

10 MR. MICHAELS: And then --

11 MS. MANDEL: And the reason would be that you
12 could not -- why it would have to go then to another
13 meeting to be noticed for closed session, the reason
14 is --

15 MR. HELLER: Well, at this point we would not
16 have had a notice for this portion of the meeting being
17 conducted during an open session. So, I believe it
18 would have to be --

19 MS. MANDEL: No, I mean, I just want to close
20 that loop because there was a question about why it had
21 to go to a subsequent Board meeting.

22 MR. HELLER: Well, basically, there was
23 actually two different things. One, is it needs to
24 just -- to provide notice to the taxpayer that they're
25 having a hearing during an open session and give them
26 time to prepare.

27 MS. MANDEL: Okay, you've -- you've flipped.

28 MR. HELLER: All right.

1 MS. MANDEL: Okay. If the --

2 MR. HELLER: Okay, I'm sorry.

3 MS. MANDEL: Okay, maybe I flipped them. If
4 the -- so, your rule is if the Chair -- if the Chair
5 says it should be closed, then -- then it's on the
6 Public Agenda Notice as part of it will be closed.

7 MR. HELLER: Correct.

8 MS. MANDEL: And if the Board makes a motion,
9 no, huh-uh, and we want it to be open, you're saying
10 then it -- it would have to go to another meeting.

11 MR. VINATIERI: Get renoticed.

12 MS. MANDEL: And the reason it would have to be
13 renoticed --

14 MR. HELLER: Yes.

15 MS. MANDEL: -- is -- why would it have to be
16 renoticed? I mean, I guess I was thinking that you
17 would have part of it open and -- you're saying if the
18 entire hearing was closed, it would then have to be
19 renoticed, that would be in open session.

20 MR. HELLER: Well, the portion -- the way that
21 it's set up is it's designed -- the taxpayer -- we want
22 to make sure that the taxpayer has a right to -- to
23 waive that oral hearing if they get a contrary
24 determination on their request for a closed session.

25 MS. MANDEL: Or to reconstitute their --

26 MR. HELLER: Correct.

27 MS. MANDEL: -- evidence in a way that they
28 could feel comfortable having it in an open session.

1 MR. HELLER: Right. So, what --

2 MS. MANDEL: So that's --

3 MR. HELLER: -- we would do then is say now
4 we're going to re -- we're going to reschedule it for an
5 open session for the entire -- for the entire hearing.
6 There will be new PAN date. There will be an
7 opportunity to waive that hearing if the taxpayer
8 doesn't want to go ahead now and discuss things during
9 open session. And if that's the case, then there --
10 they would not be waiving their right to confidentiality
11 with regard to that hearing.

12 MS. MANDEL: And the one time that I had the
13 issue we had to reconstitute the evidence in a way that
14 the company was comfortable with it being in an open --

15 MR. MICHAELS: So, if --

16 MS. MANDEL: -- review.

17 MR. MICHAELS: If the -- Peter Michaels -- if
18 the Chair's recommendation is approved or the Board
19 supports a closed session, then the hearing would take
20 place right then and there?

21 MR. HELLER: Right. During that meeting
22 there's a --

23 MR. MICHAELS: The way you draft that, the
24 parties would -- would during that segment of the
25 hearing go -- either go closed -- ask the public to
26 leave or go into a separate room or some such, so -- so,
27 if the Chair's preference is honored, the case goes
28 forward. If it isn't, then the taxpayer comes back?

1 MR. HELLER: Correct.

2 MR. MICHAELS: Okay.

3 MR. HELLER: In that way the taxpayer doesn't

4 show up on a day and then have their information

5 disclosed.

6 MS. MANDEL: Chris has a question, behind you.

7 MR. SCHUTZ: With Property Tax hearings it

8 would have to be -- all closed sessions would have to be

9 in November. So, you would have at least December --

10 MR. LAMBERT: You'd have a --

11 MR. SCHUTZ: You have the idea, I'll flip it

12 over.

13 MR. KAMP: Steve Kamp with Betty Yee's office.

14 If I'm not mistaken, I think State assessee provis --

15 hearings are the ones that are subject to December 31.

16 But I believe State assessee hearings are outside the

17 scope of the closure rule.

18 MR. VINATIERI: Correct.

19 MR. KAMP: So -- yeah, I think they are.

20 MR. HELLER: Yeah, that's correct. State

21 assesses --

22 MR. MICHAELS: But they are not outside the

23 Government Code, I don't think.

24 UNIDENTIFIED VOICE: No, they're in it.

25 They're definitely in agreement.

26 MR. HELLER: Yes, State assessee hearings are

27 required to be conducted at a public meeting. So

28 that's --

1 MR. MICHAELS: Otherwise have you -- there are
2 a lot of similarities between how local assessment
3 appeals are conducted -- hearings are conducted and how
4 the Board during -- an Assessment Appeals Board
5 conducted itself. Have you compared -- because the
6 local meetings are routinely closed to the public for,
7 you know, this period of time when there's confidential
8 information only.

9 Has the staff done any comparative analysis
10 with local AB clerks to see whether these rules would
11 track or differ?

12 MS. RUWART: A little bit. A long time ago, I
13 had to go back and look at my notes, we did have a
14 specific statute and we have a different timeframe for
15 State assessees.

16 MR. VINATIERI: Okay. But -- this is Joe
17 Vinatieri. So, and I wanted to take you guys back to
18 what Peter is saying, because we did this on a fairly
19 regular basis on local property tax matters, where you
20 have a local Board of Equalization or Assessment Appeal
21 Board, and I believe this is covered. And I'm concerned
22 to the extent that you can, I'd like to see symmetry
23 between the State Board and the local Boards. Whether
24 it be local Boards or Property Tax, this would be --
25 obviously not Property Tax, because as I understand
26 it --

27 MS. MANDEL: You just mean in terms of -- of
28 leaving aside the State assessee thing --

1 MR. VINATIERI: Right.

2 MS. MANDEL: -- just how the rules are set up
3 on how -- what gets closed and how it gets closed and --

4 MR. VINATIERI: That's -- that's --

5 MS. MANDEL: Just -- just the process?

6 MR. VINATIERI: Yes, that's correct. And --
7 and you can find it in the Property Tax rules on trade
8 secrets, and it's also covered in several counties. I
9 have local rules, and I would just say as a general
10 matter what they do is you have to make a showing per
11 the -- I think it's State Board of Equalization Property
12 Tax rule -- it's not 305, it's right around there. And
13 it says specifically that if you are going to have
14 information that you consider to be trade secret
15 information, it has to meet the definition of the Code
16 of Civil Procedure, which you have done here, which I --
17 I like. And you have to make that showing prior to the
18 hearing, and then you'll get a response back from that
19 particular County.

20 Because what they do then is they take it to
21 their Board in a session that you're not at.

22 MS. MANDEL: That was one of the questions I
23 had.

24 MR. VINATIERI: Right. And then they make a
25 determination, and if it turns out that the
26 determination is inconsistent with what you want, then
27 you either have the right to go to Superior Court and
28 attempt to get a protective order, or you come into the

1 Assessment Appeals Board --

2 MR. LAMBERT: That's the reason for the delay.
3 They'll give you a chance to go get a protective order.

4 MR. VINATIERI: Right. Right, exactly. Or you
5 come back to the Assessment Appeals Board for the day
6 that it's noticed for hearing, and you try to talk them
7 into why they're wrong, or you reconstitute your --
8 your evidence.

9 MR. LAMBERT: Got you.

10 MR. VINATIERI: And it's very clear, however,
11 and this is important for -- for advocates of open
12 government -- it's very clear that the period of time
13 that the hearing is actually closed is very precise,
14 because it's very narrow, very limited, and you have to
15 make that showing in that CCP application as to what the
16 trade secret is and -- and what you anticipate.

17 And usually the trade secret is confidential
18 financial data. And it's closed, and the transcript is
19 sealed, as are the documents that are -- that are
20 entered into evidence for that period of time. They are
21 sealed documents. So, you essentially at the end of the
22 hearing have two different sets of documents and two
23 transcripts; one for the open portion and one for the
24 closed portion.

25 And that's to protect you for purposes later,
26 of course, because we all know that there's no de novo
27 in local Property Tax cases unless there's a question of
28 law. That's to protect you for purposes of making sure

1 you made your record if you're going to Superior Court
2 on a valuation issue.

3 And usually the financial secrets, trade
4 secrets, relate to valuation, using income approach.

5 So, I just -- I throw that out because I see
6 symmetry here, which I think is very good, and to the
7 extent that we can continue or even improve upon that I
8 think that's -- that's important from -- because it's
9 one tax system.

10 MS. RUWART: Steve Kamp.

11 MR. KAMP: Steve Kamp and Alan Lo Faso here
12 from Board Member Betty Yee's office. We just
13 circulated this morning in -- in a letter which we have
14 some proposed changes to Article 2 of the rules, because
15 I don't see that here -- a few proposed changes to the
16 closure procedures in Chapter 5 of the rules.

17 The first, we -- point we want to make is that
18 we think a standard should be narrowed. I think the
19 point that Mr. Vinatieri made about the initial showing
20 that's required of trade secrets has a significant
21 limitation on what could be kept out of the public
22 domain. But we think that -- and we think the reference
23 to the -- the Civil Discovery Act -- the closure
24 provision is -- is good.

25 But we ought to note there is -- the taxpayers
26 ought to have the burden of proving that there is a
27 trade secret. And why the disclosure would be
28 embarrassing. But also why the Board could disguise the

1 non-portion -- non-closed portion of their tax case
2 without public disclosure of the information they wish
3 to keep confidential.

4 This is not really that much different than
5 what's in the rule now, but it tightens it and makes it
6 very clear as to who has the burden of proving closure.

7 The second point we would like to make is we
8 believe the full five-member Board should decide whether
9 to close a portion of the hearing rather than --
10 than having this dual voting procedure where the Chair
11 makes the determination, then the Board can un -- can
12 make a different determination in closed session.

13 We would rather have a full five-member Board make
14 the termination about closure and have the Public Agenda
15 Notice also state that -- that a portion might go into
16 closed session. And then in closed session, if the
17 Board wanted to change its mind, a quorum could vote to
18 bring it back into open session.

19 That way all the hearing would be conducted on
20 the same day, instead of having a procedure where you
21 have it on one day, then it gets put over again.

22 And we also think since we have five elected
23 Board Members, they're the ones who ought to make the
24 decision about whether to close a hearing.

25 And then this goes back to the point I just
26 made, that we don't believe the Board is required by the
27 Bagley-Keene Act to postpone upon the conclusion of a
28 hearing to a future meeting. If you just do the notice

1 right, you could actually have the remainder of the
2 hearing on the same day.

3 MS. MANDEL: Yeah, I think that's true, but
4 they -- they had their reasons of why --

5 MR. KAMP: We --

6 MS. MANDEL: -- to kick it.

7 MR. KAMP: We understand that.

8 MS. MANDEL: To kick it.

9 MR. KAMP: But if you go to a full Board
10 decision on closure rather than just having the Chair
11 have that authority --

12 MS. MANDEL: Right.

13 MR. KAMP: -- you can do that.

14 MS. MANDEL: That can be a separate issue on
15 whether it's just the Chair or -- or just bring -- bring
16 it as a motion to the Board.

17 MR. HELLER: Yeah.

18 MS. MANDEL: But the two issues that Brad
19 identified of giving -- making sure the taxpayer has the
20 opportunity to waive an oral hearing so that if he
21 cannot or does not want to reconstitute his evidence
22 into something that he feels would be appropriate for
23 open session, he can waive the hearing and not have that
24 confidentiality waiver.

25 And, alternatively, he can go back home and
26 say, "Maybe there's a way I can reconstitute my evidence
27 and not have my trade secret problem that they're not
28 going to let me have a closed session."

1 Those would be the two reasons for -- even if
2 the full Board made a decision to hold it in open
3 session rather than the Chair, to kick it to another
4 meeting. Those -- that's the balance that staff was
5 talking about.

6 MR. LO FASO: And -- and I guess we didn't
7 fully appreciate that balance, but --

8 MS. MANDEL: Yeah. I just --

9 MR. LO FASO: -- but I wanted to explore it
10 with -- so, the issue is the subsequent meeting is
11 generally to allow the taxpayer a little more time to
12 consider the consequences of not having their request --

13 MS. MANDEL: Yeah, I -- Brad -- Brad made the
14 points and I don't want to get in a discussion with all
15 the Board staff here, but only just tell you what
16 happened the one time that I had this, and it was a
17 State assessee matter many years ago when the Board was
18 first making the decision that it would not -- could not
19 hold State assessee matters at any point in closed
20 session.

21 We had information to substantiate our opinion
22 of value that was quite detailed and that the company
23 felt very strongly was trade secrets, and would qualify
24 for closure. We -- we submitted it under -- under a
25 request to keep it confidential, et cetera, et cetera.

26 The Board at a time we weren't notified
27 actually considered whether it would close and decided
28 not to. We asked for all that information back on all

1 of the companies that were involved, asked for their
2 information back. We did have quite an amusing mess
3 because Board Proceedings sent our client's information
4 to a different law firm, but we straightened that out.

5 But what happened then was because we had to
6 support our valuation, the company came up with a more
7 simplified way of presenting the information that the --
8 that the company felt comfortable with. The company
9 wasn't going to have a, you know, brain hemorrhage if
10 that information was released publicly in that format.

11 And so, -- but that -- that maybe wasn't -- you
12 know, maybe they would have really preferred to have the
13 first information because it was more detailed. But,
14 you know, they weren't comfortable with that in open
15 session.

16 So, if you -- unless people are going to be
17 ready at that meeting, that first meeting, to -- I have
18 Version A, which is like really confidential and Version
19 B, which if I have to I'll live with -- but, you know,
20 what we were able to do by the time of the hearing was
21 come up with Version B and -- and put that information
22 in.

23 And I think, you know, the result actually when
24 we got to Court was we got everything sealed, as I
25 recall. The Courts were willing to seal it but the
26 Board was not willing to seal it.

27 But we were able to reconstitute -- now, if the
28 client had not been able to reconstitute the

1 information, they might have said under that
2 circumstance, "Send me the information back and we'll
3 just go without it and see what the heck happens and
4 deal with it later."

5 But that's just the example of someone being
6 able to rejigger what they were going to put in. They
7 weren't as happy with it as evidence from their
8 standpoint as the original staff, but the Board was not
9 going to keep the original stuff under seal. So, they
10 had to come up with, you know, Alternative B.

11 MR. LO FASO: So, just as a response to my
12 question I was trying to ask --

13 MS. MANDEL: Sorry.

14 MR. LO FASO: -- I will just cut to the chase.
15 Rather than having a hardwired requirement that we're
16 always supposed to know, if our proposal was predicated
17 on a -- we would craft it whether it was a Bagley-Keene
18 requirement (inaudible) perhaps rather than hardwiring
19 that it always works this way, should we instead just
20 have a process where the taxpayer can say, well, time
21 out as opposed to it always being that way?

22 MR. MICHAELS: That -- Peter Michaels, and the option
23 there strikes me as a fair middle ground.

24 I had an experience where I wanted a closed
25 session and was told forget it, and I said, "Well, you
26 know, at the moment I feel really handcuffed and
27 foot-cuffed because I can't make my argument."

28 And they said, "Well, go ahead and make your

1 argument, anyway." And I did and lost.

2 Had I the opportunity, I would have talked with
3 the people I represent and said, "Look, it's going to
4 cost a lot of money to come back up here. It's going to
5 cost a lot of money to go back to the drawing board on
6 our case. Do you want to go ahead without the central
7 argument or do you want to spend the money to come back
8 here?"

9 But, you know, it's a tactical and an economic
10 choice, and I did think it was unfair for them to say at
11 the time, tough luck, you know, if you don't want to
12 talk about it that's your problem, but you're on and you
13 got ten minutes and that's life.

14 MS. MANDEL: Yeah. I mean we -- we had the
15 benefit all those years ago because it was the first
16 case where the Board was going to decide it, not to hold
17 something closed. So, we had that benefit where they
18 made that decision well in advance of the hearing. It
19 was the first time.

20 MR. MICHAELS: Well, the --

21 MS. MANDEL: Pete, your -- your issue gets
22 taken care of there's a process in the -- in the rules,
23 then you know what -- then you know -- then you know
24 what the game plan is and you can plan accordingly.

25 MR. LAMBERT: You can prepare accordingly.

26 MR. MICHAELS: Yeah, I -- I was told that
27 either you're going to have to keep the secret and drop
28 your case or tell the secret and disappoint somebody.

1 But in life sometimes you just have to break your word,
2 I was told by a Board Member during the hearing. So,
3 we -- that's not a very fair choice, I don't think, on
4 the spot.

5 MR. LAMBERT: Is that Mr. Andal?

6 MR. MICHAELS: No, it was Mr. Klehs.

7 MR. VINATIERI: I was going to say, Mr. Klehs.

8 MR. MICHAELS: Sometimes you just have to break
9 your word.

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1 MS. RUWART: I had a question -- I only had an
2 opportunity to briefly scan this, but what have you --
3 have you considered for a same day hearing, particularly,
4 what is the interplay of your proposal if the early
5 disclosure, ten days in advance, is adopted?
6 Because presumably you're talking about a case wheresome
7 information will be desired to be closed and the Board
8 may or may not decide that.

9 What do we publish ten days before that?

10 MR. LO FASO: I'm a little unclear as to
11 what --

12 MS. MANDEL: Could you explain that a little?

13 MS. RUWART: I'm sorry.

14 MS. MANDEL: Explain the -- because the waiver
15 of confidentiality and all the information --

16 MS. RUWART: Applies.

17 MR. HELLER: Well, staff set up -- staff's
18 proposal sets up a two-step process.

19 i think your language wants to combine it down
20 to been a one-step process.

21 Let me just really quickly how we think -- at
22 least what I'm hearing and then we can clarify it so we
23 can all be on the same page.

24 But I think -- what we were envisioning was
25 that the taxpayer, long before there is a waiver of
26 confidentiality, can request a portion of their hearing
27 in closed session and get a response back from the Chair
28 before the date comes for -- for the waiver to apply and

1 be necessary.

2 MS. MANDEL: And the waiver applies when?

3 MR. HELLER: It applies as of the Public Agenda
4 Notice date for their scheduled hearing.

5 MS. MANDEL: Okay.

6 MR. HELLER: Okay. So, basically it's designed
7 so that under our proposal the Chair would give them
8 notice of whether they granted or denied the closed
9 session before the Public Agenda Notice goes out, ours
10 says at least five days before that.

11 Then that taxpayer would have five days to
12 decide, "Do I want to still go forward with my hearing
13 or not?"

14 We have the notice. Now, my understanding from
15 your proposal is to not have the Chair rule on the
16 proposal, but the comments from your office is that we
17 want to not have the Chair make a decision, just we want
18 to have the Board do it.

19 And I think what everybody is not clear on is
20 is the Board going to do that in advance?

21 Because you're talking about if the Board
22 decides against the taxpayer, they'll just go to hearing
23 that day.

24 That doesn't sound like an advance decision.

25 MR. LO FASO: I think -- well, it will just
26 boil down -- I don't understand what the disclosure
27 things are because I see this -- I don't understand how
28 this applies -- but that notwithstanding, two simple

1 principles, Board decides, not Chair, principle No. 1.

2 MS. MANDEL: Right.

3 MR. LO FASO: No. 2, why put things over if we
4 don't have to?

5 If -- if the taxpayer wants to assert a right
6 to protect themselves, that's a fair thing, but why if
7 we don't have to?

8 MS. MANDEL: Then what he -- you need to go
9 through is the waiver of confidentiality, which would
10 happen with the Public Agenda Notice on any case, and
11 this information that the taxpayer is going to ask the
12 full Board to take in a closed session when that Public
13 Agenda Notice comes out, under the way it's set up, has
14 that information -- the confidentiality --

15 MR. LAMBERT: Cat is out of the bag.

16 MS. MANDEL: By virtue of being on the Public
17 Agenda Notice for hearing that it's eviscerated right
18 then, so that's --

19 MR. LO FASO: 5033.1 to say --

20 MS. MANDEL: That's the --

21 MR. LO FASO: -- that if you have requested the
22 process under .2 you have been deemed waived.

23 MS. MANDEL: Okay, go ahead.

24 MR. HELLER: Our goal here was not to create a
25 loophole where everyone who wants to request this
26 process then doesn't get their stuff disclosed in
27 advance.

28 That's what would happen.

1 MS. MANDEL: That was --

2 MR. LO FASO: I'm confused.

3 (Unintelligible -- several people speaking.)

4 MR. HELLER: Here's my -- I think if I could
5 just go back, I think I can still build this up because
6 I don't think we have any disagreement, I think we're
7 just still trying to understand the same process.

8 Here's my thinking now, let's say we take out
9 the Chair on the that initial determination and put the
10 Board in, I think that's the main -- the main thing that
11 your office wants.

12 MR. LO FASO: That's correct.

13 MR. HELLER: It's not what happened.

14 So, we put the Board in there.

15 MR. LO FASO: More importantly, you have the
16 Board in there.

17 MS. MANDEL: Yes.

18 MR. HELLER: Right, right.

19 There's no disagreement here on why that might
20 be a good idea.

21 MR. LO FASO: Yes.

22 MR. HELLER: We're just talking about the
23 procedures of it all.

24 So, if we have the Board do that in advance
25 again, so that we have notice to the taxpayer in
26 advance, before the waiver applies -- which is what you
27 keep talking about -- that's the whole purpose of
28 getting this done in advance so that they can have a

1 knowing waiver or not.

2 And so we have the Board do that, the whole
3 Board does it, then why would the Board then want to
4 rush into a hearing? The Board would then decide,
5 right, the full Board --

6 MS. MANDEL: So, it would be like a motion
7 practice?

8 MR. HELLER: -- and schedule the hearing --

9 MR. LAMBERT: Yeah, right.

10 MR. HELLER: -- in the future, I think,
11 basically, which would be scheduled the way the whole
12 Board wants it scheduled, right?

13 Then at that point we have that meeting
14 scheduled, why would we want to then have the Board go,
15 "Oh, we just changed our mind on you taxpayer and now we
16 want to go directly to a full, open session."

17 MS. MANDEL: Chris has something he wants to
18 say.

19 MR. SCHUTZ: This is Chris Schutz.

20 If it goes to all five Board Members when he
21 makes a request, then that would have to go to an agenda
22 just as being a request.

23 And before it even has a hearing, you just
24 have, "Oh, this is a request out there."

25 And I don't know where it would go, maybe to
26 Chief Counsel matters as a request for closed session.

27 You would have then Board Members, all five
28 Board Members, get to decide, "Okay, we want to have a

1 closed session."

2 Otherwise you'd always have to have it on as a
3 closed session agenda item and an open session agenda
4 item so that if the five Board Members decided that they
5 wanted to have a closed session, it would go to closed
6 session. Otherwise, it's not agendized for closed
7 session.

8 MS. MANDEL: Right.

9 MR. LAMBERT: So, I think our response is that
10 it gets so complicated?

11 Is that what you're saying in terms of --

12 MS. MANDEL: Well, but the simple one that Alan
13 was suggesting was that if the problem is that when you
14 issue -- the PAN would still have show -- if you did it
15 all on the same day, the PAN would still have to show
16 everything.

17 But if the problem with their -- because
18 you have -- you can't take something -- if you agendize
19 for open session, you can't then -- they're saying under
20 Bagley-Keene -- you can't then just say, "Okay, we're
21 closing this part of the hearing."

22 You have to have something that says, "closed
23 session."

24 MR. LO FASO: That's our proposal, we know
25 that.

26 MS. MANDEL: And with respect to waiver of
27 confidentiality of this information that would otherwise
28 occur under the way staff's written the basic rules on

1 waiver of confidentiality, what I heard Alan saying was
2 then couldn't you put in the waiver of confidentiality a
3 little, "except with respect to materials that they have
4 requested this process under what the other rules are?

5 MR. LAMBERT: And how would you prepare the
6 summary?

7 If there were two summaries -- there would be
8 two summaries.

9 MS. MANDEL: Yeah.

10 MR. LAMBERT: One summary with Version A and
11 one summary with Version B?

12 MR. LO FASO: Well, no, I mean -- let's dig
13 deeper.

14 I'm unclear as to --

15 MS. MANDEL: I thought there --

16 MR. LO FASO: -- as somebody who doesn't always
17 feel he understands the underlying facts in the hearing
18 summaries, I guess it's not a given for me that the
19 hearing summary is actually even going to make reference
20 to it in a way that would disclose it improperly.

21 That's why I'm stuck on the -- on that
22 question.

23 MS. RUWART: All I'm saying is it could happen.
24 It could be possible not to be able to write a hearing
25 summary that is at all coherent without specific
26 reference to the information that the taxpayer wants to
27 keep secret.

28 In that very tiny case, my question becomes --

1 or my concern becomes, I guess, a potential loophole.

2 If we are saying that the hearing -- that the
3 Board wants to both make that determination with respect
4 to the secrecy and decide the matter on the same day,
5 then I believe that the -- that the Board staff now has
6 to decide, you know, do you publish the hearing
7 summary -- which in the ordinary course would make some,
8 you know, minimal, but some reference to that secret
9 or -- and here my question is, so you redact it because
10 the taxpayer has requested redaction.

11 Board staff -- the Board staff preparing the
12 hearing summary certainly has made no determination as
13 to the legitimacy of that request. Is it possible that
14 a taxpayer could use that as a loophole to avoid
15 exposing information which the full Board will then deny
16 the closure request on, but the public has been denied
17 access to that information unless the Board then goes
18 out and republishes Version B of the hearing summary.

19 MS. MANDEL: Okay, here -- their two main
20 points were they want the full Board to decide the
21 closure issue and they want no unnecessary
22 postponements, so, no necessarily automatic hearing
23 postponements or whatever.

24 And maybe, considering the reasons that Brad
25 gave of why they set it up that way, whatever, maybe you
26 guys should work together on what language you would --
27 whatever suggest because we're going to need language at
28 some point.

1 MR. LO FASO: I certainly agree that we might
2 not -- we wanted to put this out, sorry we put the
3 letter in ten minutes before --

4 MS. MANDEL: No, that's fine.

5 MR. LO FASO: Sorry But maybe because you've
6 heard the reasons why they gave and maybe -- and then
7 with whatever -- because if you have -- I mean your
8 points, the rest of the Board may feel a certain way or
9 not, but certainly having language that works all around
10 and they can help you with that, whatever

11 MR. SCHUTZ: You know, it's just a matter of
12 course because it's out there and they could do it
13 now -- request a closed session.

14 So, you might have, you know, agendas, you
15 know, you have a half a dozen cases that are closed that
16 are agendized for the closed session and open session
17 and the Board has to decide --

18 MS. MANDEL: Right.

19 MR. SCHUTZ: -- on, you know, every case.

20 MS. MANDEL: Which may suggest doing it more
21 like a motion to practice in advance, but I don't know.
22 That's why maybe they should get with staff.

23 MR. MICHAELS: What have you thought about --
24 it's not uncommon for there to be four rather than five
25 people sitting up there on that dais.

26 What if it's a tie? Is that a decision? If
27 there's a two-two split, the two Republicans and the
28 two --

1 MR. LAMBERT: There's a motion made -- there's
2 a motion made by the taxpayer. If it's -- if they don't
3 win, they lose.

4 MR. MICHAELS: So, a tie actually is a loss?

5 MR. LAMBERT: Right.

6 MR. LO FASO: Well, it's not a majority of the
7 quorum.

8 MR. MICHAELS: That's right.

9 MR. HELLER: And your -- your point's not
10 directly on point to what we're talking about.

11 Although it's --

12 MR. MICHAELS: Full Board -- a full Board can
13 be four people.

14 MR. LO FASO: Understood. This is -- this is
15 very instructive because, you know, a lot of -- this
16 is -- our office is asked a lot and it's of sort of a
17 functional analysis of these things -- whether it's
18 going to be -- you know, there's gameshipman's
19 opportunities or whether -- if it's going to be once in
20 a blue moon.

21 This is really important for stuff for us to be
22 talking about.

23 MS. MANDEL: Yes.

24 MR. MICHAELS: And it does strike me -- and I
25 heard what Bob said I know how the Board interprets
26 ties -- seems inevitable that there are going to be ties
27 and it seems --

28 MR. LAMBERT: You guys --

1 MR. MICHAELS: -- unfair for a tie go to the
2 home team, seems like you should get a tie broken.

3 MR. LO FASO: If the Chair favors nondisclosure
4 and the Board is split, if the Chair makes an additional
5 call, the results will be nondisclosure.

6 On the other hand, if there is no Chair initial
7 decision and the Board is split, the rule -- the result
8 will be not in favor of the nondisclosure.

9 I appreciate the preliminary indication, it's
10 not what I spent a lot of time thinking about.

11 MR. MICHAELS: A tie is not a decision in my
12 mind.

13 MR. KAMP: The notion that if you don't get --
14 if you have a tie vote on a motion, the motion fails.
15 That's Robert's Rules of Order, basic parliamentary
16 procedure.

17 It's nothing unusual, you know.

18 MR. HELLER: I want to quickly notice and add
19 on to her point, I think it's slightly germane, is that
20 staff -- you know, staff, when we first looked at this
21 we did consider having the entire Board decide and we
22 definitely recognize that this was an extremely
23 important issue that would be -- you know, hinged --
24 really would be the linchpin on whether, you know, a
25 very large taxpayer goes before the Board on a multi
26 billion dollar cases or even a large group of taxpayers,
27 so, we definitely took it extremely seriously.

28 But we looked at the procedural issues and our

1 feeling was that if we do it for the whole Board -- if
2 there's a decision by the whole Board, then we're going
3 to need to -- to get them basically bring the entire
4 Board up to speed on whatever is going on in the case
5 that is necessary to determine this issue, probably
6 notice this for closed session as well, because if the
7 Board Members are going to discuss it at all, then
8 they'll be discussing the trade secret or the potential
9 trade secret and they can't do that during an open
10 session without possibly disclosing the trade secret
11 itself.

12 This would defeat the purpose of having --
13 we're going to have to schedule all of these for closed
14 session every time there is a request to be done.

15 Every one of these will have to be properly
16 noticed as a closed session item so that the Board
17 Members are all there, they do have the ability to --
18 you know, they need to discuss it and ask staff
19 additional questions about why is something there or why
20 it's germane to the case and those kinds of things.

21 And they're also going to be exposed to the
22 substantive issues in the case as well. And I don't
23 know how much the, like, public is going to feel
24 confident in not -- in either being admitted to that
25 closed session to argue their position now or --

26 MR. LAMBERT: That would kind of defeat the
27 purpose.

28 MR. HELLER: I understand, but I'm just trying

1 to understand how -- the policies.

2 MR. LO FASO: I will say that staff is
3 articulating an initial disagreement with the Yee
4 proposal and I'll say that this is a process whereby a
5 Board Member's office is trying to articulate this and
6 to put you a proposal out and that I will absolutely say
7 that we should take Marcy up on her suggestion to just
8 follow the constitution.

9 MR. HELLER: We don't disagree, let me just say
10 that.

11 We can do that, I was only explaining why we
12 thought -- why we waited.

13 MS. MANDEL: We can do that.

14 And I really would suggest that if they want to
15 go forward with their thing, they can sit here with the
16 staff and work out language so that if we're going to
17 vote, we have something to vote on.

18 MR. VINATIERI: Can I comment?

19 MS. MANDEL: Please.

20 MR. LAMBERT: Right.

21 MR. VINATIERI: Joe Vinatieri, and, you know,
22 make sure -- I want to put in the two cents worth on
23 behalf of the taxpayer.

24 Depending upon how you all are looking at this,
25 if turns out that you are going to have a closed session
26 among the Board Members and the staff to determine
27 whether this should be -- the hearing should be the
28 portion related to the financial trade secret

1 information should be closed or not, then I think you
2 need to make sure that you have the taxpayer there also
3 because they have the burden of proof, i.e., along the
4 lines that you're talking about if you're going to make
5 it a motion.

6 MR. LAMBERT: That's not --

7 MR. VINATIERI: They're going to have the
8 burden to prove that, why this is trade secret
9 information and why it's damaging or potentially
10 damaging if it becomes public.

11 MR. RUWART: Can I ask a question, Joe?

12 Did you say before that under your local AAB
13 rules that the AAB makes the decision without the
14 taxpayer being there?

15 So how would that be symmetrical?

16 MR. MICHAELS: No, it doesn't, no.

17 The local AAB -- I'm not Joe.

18 MS. RUWART: Okay.

19 MR. VINATIERI: I did say that.

20 MS. RUWART: I might have misheard it, but --

21 MS. MANDEL: That's what he said.

22 MS. RUWART: He did say that.

23 MR. MICHAELS: I was not listening well.

24 MR. VINATIERI: No, I did say that.

25 Because what you do in local practice is you
26 have to make the CCP showing in advance of the hearing.

27 Normally that Board gets together and makes the
28 determination whether it's closed or not. They then

1 come back and they tell you, "Well, we agree with you or
2 disagree. So, when you come back for your hearing,
3 we're going to do this portion closed, the rest of it is
4 going to be open."

5 Sometimes we have situations where we've said,
6 "Hey, this, this and this needs to be closed." They
7 say, "No, we agree with this and this, but not with
8 this."

9 So when we come back, we then have a discussion
10 of that and what the -- what the reason why we felt the
11 way we did over and above what we put in writing.

12 If we didn't not like it at that point in time,
13 then we either went to court or we reconstituted the
14 information.

15 What I'm concerned about here, why I'm saying
16 this here is, under -- under the practice of many
17 counties they will look at a taxpayer's request for
18 closure on a relatively -- I don't want to say liberal
19 basis, but their view is if there's any chance that, in
20 fact, this information could be detrimental and cause a
21 substantial detriment to that taxpayer's business, then
22 benefit of the doubt goes to the taxpayer.

23 And they look at it that way.

24 Now is that i codified? Is that written down
25 somewhere? The word is no.

26 But that is my experience in Santa Barbara
27 County. It's been my experience in Los Angeles County.
28 I am trying to remember where else I have had it.

1 But because of the potential down side of what
2 could happen, benefit of the doubt goes to the taxpayer
3 in those situations.

4 MS. KINKLE: Carole?

5 MS. RUWART: Yes, Sherrie?

6 MS. KINKLE: Sherrie Kinkle, property taxes.

7 I happen to have another hat besides this one,
8 I'm the liaison from our Board to the local Appeals
9 Board and I work with the clerks of the boards.

10 And I was also very much involved with
11 promulgating the Local Rules of Practice, including the
12 one that Joe is talking about.

13 One of the other things that we put -- we
14 instituted at the same time that we put the definition
15 of the trade secrets in the procedures associated with
16 that is that we instituted pre-conference hearings. And
17 that's one of the things that's determined in a
18 pre-conference hearing.

19 Now I know that's -- that could not work in the
20 same way with our Board because you have -- you have
21 your Board sitting in a hearing and just the stuff that
22 you've been talking about, you have the problem [*|of]
23 you have a hearing before the hearing to determine what
24 they might say.

25 But in the local counties they do -- they have
26 pre-conferences and the trade secrets -- if there are
27 any involved, well, that is one of the issues that is
28 determined and we have encouraged -- we being the

1 Property Tax Department -- have encouraged the --

2 MR. LAMBERT: Talking about a motion?

3 MS. KINKLE: -- Appeals hearings to err on the
4 side of the taxpayer in all instances.

5 It's -- it just doesn't make any sense to -- to
6 harm the taxpayer in any way if there are trade secrets
7 involved.

8 But I don't understand -- and, of course, this
9 document just came in so I didn't get a chance to really
10 look at the document from Miss Yee's office -- but I
11 don't understand what the concern is if the Board Chair
12 makes the preliminary decision -- determination, if you
13 want to call it that, that it's going to be closed.

14 From what I read and what I understood is that
15 when they have the hearing the other four Board Members
16 or the complete Board could make a recommendation to
17 overturn that.

18 Is that correct under our current procedure?

19 MR. HELLER: Yes.

20 MS. KINKLE: So, in essence, the full Board
21 always has the decision to make that decision.

22 MS. MANDEL: Well --

23 MR. MICHAELS: Can they turn it the other way
24 around?

25 So that if the Chair said no, they could say
26 yes?

27 MR. LO FASO: If I may respond, we could adopt
28 that logic we could have the Chair make the additional

1 call on all of our decisions and then submit it to a
2 ratification by the Board.

3 It's a different process. As Peter points out
4 it's a different mechanical potential for result, it's
5 different.

6 MS. KINKLE: But the problem is that someone
7 needs to make -- it seems -- a preliminary decision,
8 which is what this can be considered -- so that they --
9 there can be a public agenda notice so that it can go
10 forward.

11 Otherwise you have the problem where do you put
12 it? Is it closed? Is it not closed?

13 MR. LAMBERT: What are you going to do about --

14 MR. LO FASO: I guess that it's not that clear
15 to us and, hopefully, we'll have a thorough discussion
16 and that we will --

17 MS. MANDEL: That's why --

18 MR. LO FASO: -- agree with that, but it's --
19 we got some we time to talk about it.

20 MS. MANDEL: That's why I said something about
21 motion practice.

22 MR. LO FASO: Right.

23 MR. LAMBERT: So, it's a post conference
24 pre-hearing with a potential for a motion to the Board?

25 MS. MANDEL: Okay, you can talk to them.

26 MR. LO FASO: To be -- since I am -- I am
27 actively active right now because they're responsive to
28 our office -- what our office put forward.

1 But to be engaging to Joe's comment, Joe, I
2 understood that the Bagley-Keene law favors public
3 disclosure and, generally speaking, the burden is
4 against -- against not meeting the public.

5 And when you say that there is a benefit of
6 doubt in favor of the taxpayer, I am trying to reconcile
7 my --

8 MR. VINATIERI: Well, Bagley-Keene doesn't
9 apply to local property tax, but --

10 MS. MANDEL: It's the Brown Act.

11 MR. VINATIERI: -- the Brown Act does.

12 It's similar. And a decision -- a decision was
13 made -- Sherrie, thank you for reminding me -- because
14 the decision was made as part of the balancing that
15 we're talking about here, talking about the right of the
16 public to know versus the right of the taxpayer to have
17 a hearing, a meaningful hearing and not be detrimented
18 by disclosing certain information that is absolutely
19 confidential.

20 In that balancing there was a discussion when
21 we did the property tax rule along the lines you're
22 talking about and it was determined that in those
23 situations that benefit of the doubt would go to the
24 taxpayer.

25 But that's why, on the other hand, it's very
26 narrow in terms of the amount of time -- very specific
27 on the amount of time that that closed session takes
28 place.

1 In other words, the Chairman of the Assessment
2 Appeals Board is very, very clear and the Board is very
3 clear in their order that said, "This is what you want
4 to put in and we're going to make a decision yes, it's
5 confidential, but here's the parameters: You are only
6 going to be able to talk about that. The minute you
7 start talking about something else, then we're going to
8 open hearing."

9 That's within the discretion of the Board. I
10 think that's a similar situation here.

11 I don't see that to be all that different.

12 MR. LAMBERT: Would you call staff afterwards?
13 We'll try to work up some language.

14 MR. LO FASO: Absolutely. We'll have --

15 MR. LAMBERT: Again --

16 MS. MANDEL: He's just trying to understand a
17 lot of everybody's points, because he's going to take it
18 back and back explain it to someone else.

19 MR. MICHAELS: Alan, just one footnote,
20 Bagley-Keene does have a provision in it for closed
21 session and you're probably familiar.

22 MR. LO FASO: Yes.

23 MR. MICHAELS: And it cross refers to another
24 Government Code section that also is about closed
25 session.

26 So, there is Bagley-Keene language that appears
27 to be expressly on point.

28 And I think that supports a lot of what we're

1 saying.

2 MR. LO FASO: And we'll take it.

3 MR. MICHAELS: We'll have to talk off-line.

4 MR. LO FASO: Absolutely, absolutely off-line.

5 MR. VINATIERI: I like that off-line, it's very
6 techno.

7 MR. HELLER: With that real quick -- Bradley
8 Heller from Legal Department again.

9 Just to wind that up, I guess I'll just note
10 that that was also one of Mr. Lenny Goldberg's comments
11 from the September meeting was also in there on the
12 definition of what a trade secret is.

13 That's contained in his comments as well.

14 MS. RUWART: And asks for any other --

15 MR. MICHAELS: That language is his?

16 MR. HELLER: I believe he actually has
17 language.

18 MS. RUWART: Yes, he does.

19 MR. HELLER: Staff did look at it and it --

20 MS. RUWART: Actually, he did not provide --

21 MR. HELLER: We're not totally clear on how
22 that definition would exactly work, but it doesn't look
23 like it would not -- or no financial information could
24 possibly be considered a trade secret under this
25 definition.

26 And then we don't think that that's going to
27 work for the Board since we typically do have financial
28 information and that is what people are arguing --

1 MR. VINATIERI: That's correct.

2 MR. HELLER: -- so, we don't think that we'll
3 be able to work with that language as it currently is
4 proposed.

5 But I just wanted to point out that it was
6 there.

7 If there are any other comments on disclosure,
8 please feel free to share them.

9 Otherwise, we'll go ahead and move on to
10 another subject.

11 MR. KAMP: Steve Kamp from Betty Yee's office.

12 We actually have a pamphlet previously from
13 settlement discussion disclosure standards, it's 5033.2
14 subdivision B and I think you should -- if you're going
15 to look at Mr. Goldberg's suggestion, you should look at
16 our suggestion as well -- in addition to what the staff
17 has already proposed.

18 MS. MANDEL: Could you explain "the specific
19 explanation of the taxpayer's position why the issues
20 presented ... may be resolved in open hearing without
21 reference."?

22 I'm not sure I understand.

23 Can you -- do you have a --

24 MR. MICHAELS: What does that mean?

25 MS. MANDEL: What would you contemplate a
26 taxpayer would say or do for that?

27 MS. RUWART: Is there a "not" missing in this
28 sentence?

1 MR. KAMP: I think --

2 MS. RUWART: I think what you're saying is that
3 the taxpayer should be required to demonstrate why the
4 Board can't have an open hearing without referencing the
5 confidential information?

6 Is that what you really meant?

7 MR. KAMP: Well --

8 MS. RUWART: So, in other words, in that third
9 line,

10 "The taxpayer position may not be resolved in
11 open hearing."?

12 MR. KAMP: In fact, if you look at the
13 memorandum we circulated, we also say that the taxpayer
14 should bear the burden of proving why the Board can
15 decide -- it's not -- non-disclosable to -- on the tax
16 case without public disclosure of the information
17 confidential.

18 MS. MANDEL: Yeah, I don't think the "not" is
19 missing.

20 MS. RUWART: I'm sorry.

21 MS. MANDEL: I think what they're saying is if
22 I have part of my hearing closed, the Board agrees.

23 Now when the Board makes the decision on my
24 case, they have to make a decision in open session and
25 so they're saying as a taxpayer asking for closure,
26 assuming you got the closure, you would have to
27 demonstrate how the Board is able to decide your case in
28 open session without revealing any of the stuff from

1 closed session.

2 Is that what you're saying?

3 MR. KAMP: Yes.

4 MS. RUWART: Oh, I see.

5 MS. MANDEL: Brad's making the same --

6 MS. RUWART: It's almost -- it's almost like
7 you provide the Board the motion of how you can -- you
8 wouldn't really do that, but tell the Board how they can
9 say it -- how they can say the deciding of the case
10 without revealing the information?

11 Am I just really not getting it?

12 MS. MANDEL: That's why I asked -- because
13 that's how I understood the words that were here, which
14 is that the taxpayer would have to show how the Board
15 could make a decision on the matter in open session
16 without revealing any of the confidential information,
17 which would -- I guess what you are saying is that the
18 Board would be restricted in its discussion of the
19 evidence because this would always be evidence when it
20 comes time to -- you know, somebody makes a motion, they
21 make a motion that the -- that X is the answer in the
22 case. And it gets seconded for purposes of discussion.

23 And then someone says, "Why are you making that
24 motion?"

25 And the reason the guy wants to or the gal
26 wants to make that particular motion is --

27 MS. RUWART: Based on the confidential --

28 MS. MANDEL: -- based on the confidential

1 stuff, then maybe they have to go into closed session.

2 Is that what you're talking about?

3 MR. KAMP: What we're -- what we're asking the
4 closure proponent to demonstrate that -- why the
5 material that they are trying to put in or keep out of
6 the public domain is not essential to deciding the tax
7 case.

8 In other words, if you've got real trade
9 secrets that relate to valuation or something, you can
10 decide it without actually publicly revealing that.

11 MS. MANDEL: Okay, but -- but -- is it a why?

12 Because -- because it sounds to me -- I
13 mean it's hard, you know, in the vacuum of not having
14 particular facts in front you to always try to figure
15 out how these things will work, but it sounds like the
16 way it could come up, just seeing how the Boards have
17 operated -- and who knows how a future Board would
18 operate -- is that somebody makes a motion for a certain
19 thing.

20 And then it -- then -- because that's when
21 they're making the decision, right?

22 And if that motion goes and it's the motion to
23 grant or a motion to deny, the motion goes, it seems
24 like it would be -- if there was actually the Board
25 engaging in discussion of the case -- that you would
26 have the issue -- I remember we had one Board meeting
27 where we did receive some information that was
28 confidential, not in the case, but it had to do with

1 something we had to adopt, there was information that
2 the law requires be confidential, and a Board Member
3 tried to talk about what was in the paper.

4 And everybody was going, "It's confidential!
5 It's confidential!"

6 So, it seems like it would come up if there was
7 discussion. And I am just trying to figure out how a
8 taxpayer -- how this would work.

9 MR. VINATIERI: In the context of local
10 property tax what happens in that situation is, first of
11 all, you're requesting findings of facts and conclusions
12 of law, which become your basis for going to superior
13 court.

14 MS. MANDEL: Right, but we don't do that here.

15 MR. VINATIERI: I understand that, exactly.

16 So, there is -- you have that as an issue. But
17 specifically if you do have something like a memorandum
18 opinion that the Board chooses to adopt, what would
19 happen in the local property tax context is if there is
20 a specific point and they determine a value based upon
21 the income approach and they say, "We believe," or they
22 say, "Here's our conclusion, it's based upon X number of
23 dollars of revenue and adjustments made for
24 depreciation, economic obsolescence, blah, blah, blah,
25 predicated on this," which is closed, then they refer to
26 the document -- we're getting overly technical here --
27 but they refer to the document that was marked
28 Assessor's Sealed 1 or Applicant's Sealed A -- and that

1 way it would refer to it in the public document of the
2 findings of fact and conclusions of law, but you
3 wouldn't really know unless you are able to get to that
4 sealed document

5 MS. MANDEL: So, any -- any written -- if you
6 were to make this motion on your case and this were the
7 rule, what is -- what is in this submission from the
8 office, you would be able to say -- you could decide my
9 case, if you did anything in writing, by doing these
10 things and if then -- and you could decide my case and
11 if you were going to be discussing it in open session by
12 going into closed session to discuss any reasons or
13 anything that was based on --

14 MR. VINATIERI: That's it.

15 MS. MANDEL: -- the confidential?

16 MR. VINATIERI: Right, those specific --

17 MS. MANDEL: You'd have to --

18 MR. VINATIERI: -- those specific documents
19 relating to -- that were specifically proscribed as
20 confidential and narrowly --

21 MS. MANDEL: It's easier to do in writing, when
22 it's a written thing that comes back -- harder to do
23 when the Board Members are sitting there unless we all
24 have little rubber bats to, you know, stop each other
25 from -- "Don't talk about that until we go back into
26 closed session to talk about that reason."

27 So, they would be running in and out of the
28 room for something if they had to talk about the

1 information?

2 MR. VINATIERI: Yes, like I said, it's overly
3 technical.

4 I think we have to be careful on doing things
5 on an expedited basis, but at the same time balancing
6 the public's right to know versus the taxpayer's right
7 to be heard.

8 MS. MANDEL: So, I was just trying to figure
9 out what the taxpayer -- what they thought the taxpayer
10 explanation --

11 MR. VINATIERI: I would just indicate -- I
12 think we've had a pretty good discussion of this issue
13 and I think staff understands.

14 I want to make sure from the taxpayer's
15 standpoint that they understood the concerns of the
16 taxpayer.

17 Why don't you all go back and see you what can
18 hash out?

19 MR. LO FASO: Yeah, I'll call.

20 MR. VINATIERI: Any time.

21 MR. HELLER: Absolutely. And staff's
22 absolutely --

23 MR. VINATIERI: And, Brad, I'm not asking that
24 I be there as you guys talk about it on behalf of
25 taxpayer, but it can be like a closed session.

26 MR. LO FASO: It will be off-line.

27 MR. VINATIERI: Thank you.

28 MR. HELLER: Anyone else who would like to

1 share a comment after the meeting or in the next couple
2 of weeks on something like this or any proposed language
3 can submit it to staff as well.

4 And if they really -- if anybody feels that
5 they really really need a personal meeting with staff,
6 we can try to arrange that.

7 MR. LAMBERT: We can make it off-line, sub rosa
8 or even ex parte communication.

9 MR. VINATIERI: I never want to do that with
10 you.

11 MR. LAMBERT: I have no decision making
12 authority, that can't happen.

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1 MR. LAMBERT: Okay, turning to the next thing

2 --

3 MR. HELLER: Turning to the next thing, I
4 think -- I think we covered the issues that have been
5 raised for today on disclosure. No more issues to raise
6 there and on communications with Board Members, and with
7 those we're going to move forward.

8 Mr. Vinatieri submitted a few written comments.
9 I was going to ask you if there was any of those you
10 wanted to discuss orally with the interested parties
11 today; we can go through those right now.

12 MR. VINATIERI: I did. I'd like to go to --
13 and by the way, let -- let me just indicate that -- that
14 when this started last September of 2005, as we all know
15 there was an awful lot of differences of opinion. And I
16 was one of the major -- how should I say it, on-line
17 persons with difference of opinion.

18 So, this -- I appreciate the fact the staff has
19 done what it has done and there seems to be a lot of
20 consensus. So, this just represents the last that I
21 had, and in fact most of my comments that I'd done
22 previously one way or another were assuaged.

23 These are the ones where I still have concerns.
24 Let me just start with this first one, 207(b)(2). And
25 this, of course, relates to the situation that's been
26 hanging around the Board here with the childhood lead
27 appeals. And I think -- and it's been a -- it's been a
28 bit of a -- a difficult situation for everyone.

1 MS. MANDEL: This is on the first page of the
2 staff comments? This is the same thing? 2017.

3 MR. VINATIERI: 2017. 2017.

4 MS. MANDEL: Okay. And so --

5 MR. VINATIERI: And I had asked that there be
6 language in there for the situation where on these
7 tri-apartheid taxes, whether it be DTSC or DHS, and
8 there's probably some others that I'm not even familiar
9 with, where you have -- the Board has an absolute
10 responsibility under the fee appeals procedures under
11 Section 40-- whatever it is, that applies to all
12 these -- these -- these taxes or fees, excuse me, that
13 are actually billed by the Board of Equalization but the
14 other agency is -- is responsible for the -- the
15 substantive aspects.

16 I have a real problem that the Board has been
17 told by the -- by the Legislature to provide the appeals
18 process, but in certain circumstances the Board --
19 because the way the tax is set up or the fee is set up
20 for exemptions and things like that you have to go to
21 the -- that particular agency. And if that agency
22 doesn't respond, which is what happened on the childhood
23 lead cases, then the Board of Equalization says, well,
24 we can't go forward on our appeals procedures.

25 So, the taxpayer -- the feepayer, is in Catch
26 22. And so, the -- the staff has said -- staff declined
27 due to lack of statutory authority. I -- I don't agree
28 with that. I think you have your statutory authority

1 when the -- the Legislature gave the authority and the
2 responsibility and the obligation and whatever other
3 word you want to use, to provide a meaningful appeals
4 procedure for feepayer.

5 So, I -- I suggested in my comments to that
6 instead of putting a timeframe on it, which is what I
7 did initially, I just said if after a reasonable period
8 of time the State Department of Health Services -- and I
9 would say this for DTSC or any other situation that's
10 similar, that after that reasonable period of time that
11 particular department has not acted, then the case shall
12 be heard by the Appeals Division.

13 Which gives you -- I mean, obviously, I would
14 like to have 30 days, 60 days, 90 days, 120 days,
15 whatever the date might be. I'd like some -- some --
16 something in concrete, but if you're not comfortable
17 with that, then I'm just asking that at least put
18 something in there that says after a reasonable period
19 of time, maybe six months, maybe eight months, nine
20 months, whatever -- whatever the staff in their
21 deliberation thinks is appropriate in their discretion,
22 then --

23 MS. MANDEL: Have you ever taken a --

24 MR. VINATIERI: -- they do that.

25 MS. MANDEL: -- taken a writ against the
26 Department for not acting on your thing?

27 MR. VINATIERI: Well, that's what's happening
28 on the --

1 MS. MANDEL: And trying to force them to act?

2 MR. VINATIERI: That's what's happening on all
3 the childhood lead cases. They actually decided -- I
4 think Bolero started and said -- they filed a lawsuit in
5 Federal Court and said, a, the Department of Health
6 Services is wrong because this is a tax, it's not a fee.

7 MS. MANDEL: Yeah, yeah, yeah, about the --

8 MR. VINATIERI: And, secondly --

9 MS. MANDEL: -- you're not acting on my thing.

10 MR. VINATIERI: Secondly, we have not had due
11 process of law because it's been sitting there for three
12 years.

13 MS. RUWART: And what was the result --

14 MR. VINATIERI: It's --

15 MS. RUWART: -- ultimately when it went to --

16 MR. VINATIERI: They got put off and now that's
17 part of the Shell litigation that's going on right now.

18 MS. MANDEL: I mean --

19 MR. VINATIERI: That's the Shell litigation.
20 That's --

21 MS. MANDEL: Because once -- once we put
22 something in -- I mean, if it said reasonable period of
23 time in our thing then, you know, then you're suing us
24 for what's a reasonable period of time, when --

25 MR. VINATIERI: Well --

26 MS. MANDEL: -- if the Legislature wants them
27 to act first, how do we -- how do we -- how does the
28 Board -- how does the Board hold a hearing if the

1 subject of the hearing is the law says that they have to
2 decide a certain issue?

3 MR. VINATIERI: They -- the law says on
4 exemption issues that they have to decide. And -- but
5 that doesn't say -- that is not to say that the Board of
6 Equalization can't decide other issues that are related
7 to that. Or dissimilar from that.

8 You put the -- the problem is you put the
9 taxpayer, the feepayer, right in the middle of Catch 22.
10 So, what's the point of having an appeals procedure that
11 the Legislature has given you if the Board of
12 Equalization is just going to defer indefinitely while
13 this other agency sits on something for three years?

14 I mean, it's -- it makes no sense.

15 MR. LAMBERT: We may not have jurisdiction.
16 And that will be a contrary argument.

17 COURT REPORTER: I can't hear you.

18 MS. RUWART: Oh, she can't hear you.

19 COURT REPORTER: I didn't hear you.

20 MR. LAMBERT: Oh, I said the contrary argument
21 would be the Board doesn't have jurisdiction until
22 there's a denial.

23 MR. VINATIERI: I don't think the law says
24 that. It doesn't say that. It --

25 MS. RUWART: Is there anything in this comment
26 that is new from your prior comments on this issue?

27 MR. VINATIERI: Yes.

28 MS. RUWART: Or you just -- okay.

1 MR. VINATIERI: Yes. Last time I -- I put
2 down -- I believe I put down 90 days or six months.

3 MS. RUWART: No -- not in terms of the
4 language, but in terms of your rationale for why the
5 Board should do this.

6 MR. VINATIERI: No, I've gone from a specific
7 date to a more fuzzy date.

8 MS. MANDEL: Okay, let's go -- okay.

9 MR. LAMBERT: The rationale is the same, let's
10 go.

11 MS. RUWART: Okay.

12 MR. HELLER: I appreciate that. Just quickly
13 comment that staff appreciates the number of --

14 MR. VINATIERI: Right.

15 MR. HELLER: -- puts taxpayers in.

16 MR. VINATIERI: Okay, 2050(C)(3) is the same
17 thing as we just discussed.

18 Let's move into 402.5. This is under the
19 Franchise Tax matters and you can see there was a --

20 MR. HELLER: Misnumbering.

21 MR. VINATIERI: Yeah, it was a misnumbering.

22 MR. HELLER: Yeah, we picked that one up.

23 MR. VINATIERI: Okay.

24 MR. HELLER: The next draft should hopefully
25 correctly number that.

26 MR. VINATIERI: And on 4042.5 --

27 MR. HELLER: 4042.5.

28 MR. VINATIERI: -- (B)(2) I -- I just point out

1 to you as a -- in a general way, now that we've had this
2 discussion about confidential trade secret information,
3 you have put a specific provision in the Franchise Tax
4 appeals rules for prehearing conference. I think that's
5 a great idea, and I think that it wouldn't be
6 inappropriate at all to have that just in general. Such
7 as the situation we're talking about on -- on trade
8 secret information.

9 I was telling Bob as you were talking here, I
10 said I know that prehearing thing is in here somewhere.
11 I couldn't remember where it was -- where it was. So,
12 you might take that into account when you all are
13 talking about trade secret information about the -- the
14 ability of the staff to have a prehearing conference
15 to -- to work through those things.

16 MR. SCHUTZ: Since everything else has a --
17 like an appeals conference except for the Franchise Tax
18 Board --

19 MS. MANDEL: That's what this is.

20 MR. SCHUTZ: -- it would be just to bring it up
21 to -- that if you want to have a closed session, that
22 you view it as a -- a taxpayer bring it up at the
23 appeals -- appeals level so that it -- then Appeals can
24 draft -- look at the information and then either make a
25 comment or recommendation to the Board about whether or
26 not --

27 MR. VINATIERI: That -- that would work, Chris,
28 I mean, on the -- on the surface. The problem is that

1 the Appeals Conference -- say it's a Sales Tax matter
2 and you're doing a trade secret thing. In Appeals
3 conference that's all going to be confidential, anyway.

4 MR. SCHUTZ: Right.

5 MR. VINATIERI: So it doesn't even -- it
6 doesn't -- that issue doesn't arise because then if the
7 conference-holder or the Appeals Division comes up with
8 a decision that goes contrary to the taxpayer, and now
9 there is an issue that you're going to have to bring in
10 front of the Board, that at that level had been
11 confidential but to bring that same issue up in front of
12 the Board is going to be confidential, now you have an
13 issue after the Appeals Conference.

14 MR. SCHUTZ: But if you raise -- if you raise
15 that, look, this is information I'm giving you, Appeals
16 Conference-holder, but if this goes any further it needs
17 to be confidential, and then -- and then the Appeals
18 Conference-holder will comment on, "Yeah, I've looked at
19 it," you know, "I don't -- I don't think, you know, this
20 needs to -- it's required to be in closed session."

21 MR. VINATIERI: I don't know, that might be a
22 way of dealing with it. I'm -- yeah.

23 MS. MANDEL: Assuming --

24 MR. VINATIERI: In any event, let's -- let's --

25 MS. MANDEL: -- they know the information with
26 the --

27 MR. VINATIERI: Yeah, let's go back to this.
28 My only -- my concern here, I had -- I had a question

1 about 15 days, and I wanted -- I thought it would be
2 appropriate to give it 30 days, a little bit more time.
3 That was the first thing.

4 MR. MICHAELS: 30 days is for --

5 MR. VINATIERI: It says here, "The requesting
6 party may make a written request for prehearing
7 conference," and by the way, you know, I think these are
8 really good ideas and I would hope that we would
9 encourage this type of thing on Franchise Tax appeals,
10 because it --

11 MS. MANDEL: Okay, but what's your specific
12 comment?

13 MR. VINATIERI: 30 -- 30 days instead of 15
14 days. To request.

15 MS. MANDEL: To request --

16 MR. VINATIERI: It's on page 18. Oh, you're
17 not going to have it on that.

18 MS. MANDEL: Yeah, I do.

19 MR. VINATIERI: So that -- that's the first
20 issue.

21 I had a question, and -- and this is not -- you
22 know, I don't feel that strongly about it, but it says,
23 "The Appeals Decision may deny the request with the
24 approval of Chief Counsel if the Appeals Division
25 determines that a prehearing conference is likely to be
26 unproductive and a misuse of administrative resources."

27 Now, if we're talking about the staff here is
28 concerned about tax protesters, if that's really what

1 we're talking about here, I understand that.

2 However, I would certainly not like to be in a
3 situation where on behalf of a client I request one of
4 these prehearing conferences and I'm told -- and I'm not
5 dealing with a tax protester, they're not a client, and
6 I'm told, "Well, that's unproductive, it will be
7 unproductive or it will be a misuse of -- of
8 administrative resources."

9 I mean, what the heck does that mean? I
10 understand what it means in the context of tax
11 protester, but outside that context it -- it's
12 problematic to me.

13 So, I -- I -- I just basically said -- I said
14 drop or delete "misuse of administrative resources." I
15 probably should have said, well, "unproductive" is also
16 an ambiguous word or term. But I think we all know what
17 we're talking about here. But I want to make sure it
18 doesn't go too far the other way, either.

19 MR. LANGSTON: I think another -- another
20 situation would be where it is a case that involves
21 routine application of well-established law with
22 uncontested facts.

23 You know, you're -- you're in the universe of
24 the large complex cases but there's also a broad
25 universe of the relatively straightforward cases where
26 the facts are clear, we believe the law is clear. At
27 that point then the staff should have the discretion
28 to -- to say, well, you know, what -- what purpose would

1 it serve to have a conference.

2 I mean, I think that --

3 MR. VINATIERI: You're talking about like Head
4 of Household or --

5 MR. LANGSTON: Yes, basic Statute of
6 Limitations cases, Head of Household. Just application
7 of -- I don't know, you know, your -- your
8 run-of-the-mill cases, single issue, basic facts,
9 well-established law, the -- the majority of -- a lot of
10 the very small cases.

11 So that I think also would sweep in some of
12 those. I -- I don't think the intention was, though,
13 for the large complex cases that this would ever, you
14 know. I think the --

15 MR. VINATIERI: Right.

16 MR. LANGSTON: -- the tend -- the tendency
17 would be if it's a factually intensive case, if there is
18 a subtle legal -- undeveloped legal issue, you
19 know, then -- then I think the -- the expectation is,
20 yes, there would be a -- a conference, if requested.

21 ---oOo---

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1 MR. VINATIERI: Okay, I'm empathetic with that.
2 I mean I don't want to waste FTB's time or Board staff's
3 time, but I don't want to get in a situation where I have
4 a client or there is a taxpayer who's got something
5 that's, quote, unquote, "legitimate" and gets denied
6 because -- and this is a good way to keep stuff away from
7 the Board, get things resolved so they don't end up
8 having to go in front of the Board. .

9 So, let me just suggest, in terms [*|of]
10 the language, I had -- I had suggested the deletion of
11 the words, "use of administrative resources," as
12 ambiguous and the same.

13 We can use -- we could leave the word
14 "unproductive" in there and we all understand what we're
15 talking about here.

16 My concern is we're not always going to be all
17 here -- hopefully not 25 years from now.

18 MR. LANGSTON: What if we said, "In any staff's
19 opinion the hearing -- the hearing would not aid in the
20 resolution of the case," something like that?

21 Just -- you know, because I kind of agree
22 that the words, "unproductive and misuse," is pretty
23 prejudicial to a case.

24 You know, someone requests a hearing and we
25 think, you know, that sort of gives you an impression
26 that the staff isn't -- isn't behind you.

27 MR. VINATIERI: It's completely objective.

28 MR. LANGSTON: Maybe we could find some more

1 neutral phrases to indicate --

2 MR. VINATIERI: You know, I don't know with the
3 language is, do you understand what the concern is?

4 MS. RUWART: Yes.

5 MR. VINATIERI: Yeah.

6 MS. RUWART: We have some ideas about that.

7 MR. VINATIERI: You can come back with
8 something else.

9 MS. RUWART: Yes.

10 MR. VINATIERI: Okay.

11 MR. HELLER: Okay, less ambiguous and just more
12 defines the scope so that you won't be surprised if
13 somebody comes back and says --

14 MR. VINATIERI: Thank you.

15 MR. HELLER: -- "This is that, I'm not giving
16 you a pre-hearing conference because of this."

17 MR. VINATIERI: Right.

18 MS. MANDEL: He also doesn't want to have to
19 call his client and say he was denied a hearing
20 conference because it would be unproductive and a misuse
21 of administrative --

22 MR. HELLER: Misusing the resources.

23 MR. VINATIERI: Well, the negative statement
24 sure misuses my resources.

25 MR. HELLER: I think we have, at least some
26 ideas and we're going to try to work on something.

27 MS. MANDEL: yes.

28 MR. VINATIERI: Okay, thank you.

1 ms. RUWART: Right, we can do something nicer.
2 MR. LAMBERT: Non pejorative language is
3 suggested?
4 MR. LANGSTON: Yeah.
5 MR. VINATIERI: Do me a favor, Brad, when you
6 guys come up with something, just give me a call, if you
7 would?
8 MR. HELLER: Okay.
9 MR. VINATIERI: Okay, let's go over to 4062.
10 MS. RUWART: Is this the same issue or comment
11 of November 30th, 2005 -- I am sorryMR. VINATIERI: You
12 know, I don't have that comment with me.
13 MS. RUWART: It says you recommended providing
14 the taxpayer with copy of the proposed decision on a
15 petition for rehearing prepared by the Appeals Division.
16 MR. VINATIERI: Yes.
17 MS. RUWART: So, is it the same comment?
18 Anything new?
19 MR. VINATIERI: Well, yeah, there is something
20 new.
21 MS. RUWART: Yeah.
22 MR. VINATIERI: That is that I have
23 indicated -- if you look at the new proposed 5028.
24 MS. RUWART: Okay.
25 MR. VINATIERI: Look at that -- once again, I
26 am trying to find symmetry among all of these programs
27 and the way we do everything so that you don't have
28 little nuances here and there, to the extent we don't

1 have to.

2 You'll note under 5028 that's the
3 recommendation of petition for rehearing -- maybe I
4 miss -- I said 4062, maybe it should be 4063, maybe I
5 did that incorrectly.

6 What I am looking for is there has been, in my
7 opinion, mistreatment relative to the petitions for
8 rehearing by Board staff.

9 That is that when you file a petition for
10 rehearing based upon the grounds that are articulated in
11 the current Rules of Practice, that what happens is you
12 file your petition for rehearing. It goes to, I guess,
13 the Appeals Division. Appeals Division opines
14 whether -- makes -- comes up with an opinion, which they
15 give to the Board as to whether the Board should grant
16 the rehearing or not.

17 i think that's absolutely wrong. Because if
18 the Appeals Division is acting as a disinterested third
19 party between the Department and the taxpayer, then they
20 need to be disinterested.

21 And one way that they do that is that they
22 listen to both sides and they say, "In our opinion
23 here's what we think."

24 MR. LAMBERT: They have both sides, there's
25 been a petition for rehearing made?

26 MR. VINATIERI: Right.

27 MR. LAMBERT: And then they're acting as the
28 attorney for the Board and advising them of what

1 decision.

2 After that if there is a rehearing, then there
3 is a public process.

4 mr. VINATIERI: Then -- then I think that's --
5 you can't wear two hats. And I know this is
6 longstanding Board procedure, but we're finally bringing
7 all this out in the open in this new Rules of
8 Practice -- or whatever we're calling it, Rules of Tax
9 Appeals -- and if the Appeals Division is going to act
10 as an independent body looking at both sides, it can not
11 then act in a way to take this independence away and
12 basically say, "Okay, here's what we're saying," and
13 you, in essence, have done that under 5028. You are
14 making a recommendation on a petition of rehearing in
15 that context public.

16 So then, let's have symmetry in the context of
17 this rule here.

18 MS. MANDEL: Is it public?

19 MR. LAMBERT: It is public.

20 MR. HELLER: It's not public, it's to the
21 parties.

22 MR. VINATIERI: To the parties.

23 MR. HELLER: There's a difference here --
24 excuse me, Bradley Heller, Legal Department.

25 I really appreciate you bringing up this
26 comment too, Joe. It is something -- I think that it
27 warrants some further explanation definitely.

28 But there is a dichotomy in the disclosure lows

1 rules that apply to our different programs. So in an
2 appeal from the Franchise Tax Board, everything is
3 disclosable to the public, except for something that is
4 otherwise protected by a privilege. Then you may
5 disagree with us, but the Board has traditionally held
6 that there is some sort of attorney-client privilege for
7 communications between attorneys in the Board's Legal
8 Department and Board Members.

9 And so in this particular case we've
10 traditionally prepared -- should say decisions on
11 petitions for rehearing as confidential attorney-client
12 documents going from the attorneys in the Appeals
13 Division, who in this case, you're right, are acting as
14 attorneys for the Board -- not as like a neutral
15 conference holder or something really in that particular
16 framework, I don't think -- then they submit it to --
17 well, that remains a confidential, non-disclosable
18 document, even though it would otherwise be in an income
19 tax appeal through that process.

20 And then if it's adopted by the Board, it
21 becomes the Board's decision and is publicly
22 disclosable.

23 If it doesn't, it just isn't something that
24 becomes public.

25 If we provide it to the taxpayer, then the
26 Board would waive its attorney-client privilege if --
27 you know, to the extent it exists. It would be waived
28 by giving it to the party because that would be a third

1 party that wasn't required for the communication to the
2 client.

3 So, that's the reason why those aren't provided
4 to the taxpayers, not really based on some idea of
5 trying to hide something from the taxpayers to keep it
6 confidential under those scenarios.

7 In the other scenario we don't disclose that --
8 the decision on petition for rehearing, period, it's not
9 a disclosable document.

10 So, we can share it with the taxpayer and have
11 it retain its confidentiality and still submit it to the
12 Board Members and achieve our goal of having the Appeals
13 Division devise it without making this a public
14 document.

15 MS. MANDEL: You mean the petition -- on the
16 other types of -- the non franchise tax case?

17 MR. HELLER: Right. Because the business tax
18 appeal and the --

19 MS. MANDEL: So, the change in these rules from
20 the current rules are that the decision -- that the
21 recommendation on a petition for rehearing in a business
22 tax or other non franchise tax matter would be provided
23 to the taxpayer.

24 The complaint used to be, previously, that
25 unlike a hearing summary for your case when you come to
26 argue, you never saw that recommendation on your
27 petition for rehearing before the Board acted.

28 The new rules, right, this is a new thing, on a

1 business tax matter you would, as the taxpayer, see that
2 staff recommendation on the petition for rehearing, but
3 for the reasons he explained, the income tax ones are
4 different.

5 MR. VINATIERI: I thought it was the other way
6 around.

7 MR. HELLER: That's at least what our current
8 proposal is.

9 MR. VINATIERI: Okay, I --

10 MS. MANDEL: So, the ones that you used to
11 complain about, they would have a sales tax case and
12 they wrote this recommendation for the Board on a
13 petition for rehearing and they totally didn't
14 understand anything I said in my petition for rehearing
15 and (unintelligible) --

16 MR. VINATIERI: I didn't do that.

17 MS. MANDEL: She probably can't type that.

18 MR. VINATIERI: That was off-line.

19 MS. MANDEL: Those are the ones that now, under
20 the staff proposal, you would see that recommendation,
21 right, Brad?

22 MR. HELLER: Correct, for business taxes.

23 MR. VINATIERI: That's not, I'm sorry --

24 MS. MANDEL: That's what's in 5028.

25 MR. VINATIERI: Okay, I'm sorry then, I
26 misspoke. That was my major concern.

27 MR. HELLER: Okay.

28 MR. VINATIERI: Because I wanted -- I did not

1 like the situation where we filed a petition for
2 rehearing, it was a confidential -- something given back
3 to a Board Member, come to find out that they still
4 didn't understand a fact or two and then we had no --
5 absolutely no right to even see that.

6 The only way I ever saw it was if a Board
7 Member -- sometimes they do and sometimes they don't --
8 would show it to you.

9 MS. MANDEL: On the income tax ones those
10 would, under the proposal, those would stay as the
11 attorney-client.

12 MR. VINATIERI: Okay, that's pursuant to the
13 specifics of the PIT and --

14 MR. HELLER: Appeals from FTB.

15 MS. MANDEL: Those are from FTB.

16 So, your 4062, which is the FTB.

17 MR. VINATIERI: Right.

18 MS. MANDEL: You're basically withdrawing that?

19 MR. VINATIERI: That's correct, yes, that's
20 correct.

21 MR. HELLER: It was very well worth
22 explanation, I think.

23 MS. MANDEL: Yeah.

24 MR. VINATIERI: Thank you.

25 MR. KAMP: So, you're withdrawing 4062?

26 MR. VINATIERI: I am. And the same with 4065.

27 ---oOo---

1 MR. VINATIERI: Let's go to 5007(b)(4). This is
2 a case we just had in front of the Board. And I think we
3 better make sure that everyone knows what the -- the way
4 these bankruptcy petitions are being handled.

5 This was a case a couple months ago -- excuse
6 me, about a month ago. And it was in the context of a
7 bankruptcy. In this case we were set for a Board
8 hearing. The taxpayer indicated that they did not want
9 to go forward in the Board matter. They went ahead and
10 filed bankruptcy.

11 The Board went ahead notwithstanding based upon
12 attorney-client privilege document from the staff --

13 MS. MANDEL: Oh.

14 MR. VINATIERI: -- saying that you do have the
15 authority to -- to hear the case and that the automatic
16 stay does not apply in that situation.

17 MS. MANDEL: Is there a difference -- this
18 is -- this is -- oh, is this the general hearing or is
19 this --

20 MR. HELLER: Yes.

21 MS. MANDEL: Oh, okay.

22 MR. VINATIERI: It says the Board -- the Chief
23 of the Board --

24 MS. MANDEL: Not --

25 MR. VINATIERI: -- shall postpone a matter
26 subject to provisions of Chapter 4.

27 MS. MANDEL: I understand. I was -- got
28 confused again about whether we were in the FTB

1 provisions or the general provisions. My -- my guess is
2 that it's possible, but --

3 MR. VINATIERI: This is not your practice
4 today.

5 MS. MANDEL: It may be that this was written
6 prior.

7 MR. HELLER: Well, a quick question first, a
8 clarification, was your case involving an appeal from
9 the Franchise Tax Board or Business Taxes or Property
10 Taxes?

11 MR. VINATIERI: Business Tax case.

12 MR. HELLER: Okay. This procedure -- provision
13 right here, even though it is in the general Board
14 hearing procedure section, applies only to appeals from
15 the Franchise Tax Board, and it actually continues our
16 traditional practice of deferring cases or when there's
17 an appeal from the Franchise Tax Board and there is a
18 pending bankruptcy.

19 That, I believe, has been our traditional
20 policy for just appeals from the Franchise Tax Board.

21 MS. MANDEL: Oh, because it says provisions --
22 subject to provisions of Chapter 4 of this division.

23 MR. HELLER: Right, which --

24 MS. MANDEL: Do you see that?

25 MR. HELLER: Which -- which to make it more
26 clear maybe we should maybe add something to the
27 heading -- well, let me not jump ahead to clarify that.
28 But, basically, it was designed to just continue a

1 traditional policy that we've had and not expand it to
2 other areas and -- and this wasn't based on -- this
3 isn't necessarily based on anyone's conclusion that the
4 automatic stay applied necessarily.

5 MR. VINATIERI: I think we better -- there's
6 two issues here. Is there a reason for Franchise Tax
7 Board appeals to be different than the policy of other
8 appeals to the Board?

9 MR. HELLER: Uh-huh.

10 MR. VINATIERI: And, secondly, if we have this
11 policy here, which I think is right --

12 MR. HELLER: Uh-huh.

13 MR. VINATIERI: -- why doesn't this policy then
14 apply to all other cases in front of the Board?

15 MR. LAMBERT: Well, I mean that issue was
16 raised with respect to State assessee hearings. It was
17 decided, I believe, they go -- they go forward. Maybe
18 you need to go forward.

19 MR. VINATIERI: Well, I --

20 MS. MANDEL: There was -- there is -- I mean
21 Legal -- Legal looked at the issue of the automatic stay
22 in the context of State assessment.

23 MR. LAMBERT: Well --

24 MS. MANDEL: -- and in the context of Business
25 Tax and maybe they haven't thought about -- about this
26 or --

27 MR. HELLER: Let me just --

28 MS. MANDEL: -- the income tax side.

1 MR. HELLER: Well, quickly to respond, maybe
2 I -- Ken Davis can -- can help me with this slightly
3 or -- or Bruce, as well, but I believe it actually
4 really evolved out of like principles of comity between
5 FTB and the Board, and the FTB, I believe, was -- and I
6 could be wrong, this is just my historical
7 understanding, was that there -- there was a --
8 basically, a -- I don't know, the practice of generally
9 agreeing to a deferral when a taxpayer filed bankruptcy
10 and the bankruptcy involved anything relevant to
11 their -- to their issues before the Franchise Tax Board.

12 So, the Franchise Tax Board didn't demand that
13 the Board move these cases forward where the taxpayer
14 didn't want to. And so, we just basically went along
15 with that and that became a rule. But it's --

16 MR. VINATIERI: Well, the Franchise Tax Board
17 is right.

18 MR. HELLER: And so here at the Board, the --
19 the Legal Department has concluded that it's not the
20 law --

21 MR. LAMBERT: There's a --

22 MR. HELLER: -- that's required.

23 MR. LAMBERT: Time out. The Legal Department
24 has hired a number of bankruptcy attorneys because of
25 some changes in the way the Attorney General delivers
26 our representation, and they have been quite adamant in
27 telling us, you know, that the automatic stay does not
28 apply to these tax appeal hearings.

1 MR. LANGSTON: And we -- we would agree with
2 that from the Franchise Tax Board, that as Brad pointed
3 out, this was a practice in the past to conserve our
4 resources --

5 MR. LAMBERT: Right.

6 MR. LANGSTON: -- so we weren't wasting lots of
7 time developing an assessment we're never going to
8 collect. But we also take the position that the
9 automatic stay applies to collection of tax --

10 MR. LAMBERT: Right.

11 MR. LANGSTON: -- not to the administrative
12 determination of the proper amount of tax.

13 MR. LAMBERT: Right.

14 MR. LANGSTON: So, I -- I think we -- we don't
15 really care one way or another. I mean, it's always a
16 trade-off. And I think in some cases the Board believes
17 all the work's already been done, might as well decide
18 it so you have a final amount that can go into the
19 bankruptcy and be dealt with.

20 On the other hand, if it would require a lot of
21 staff time and development and, you know, the -- the
22 taxpayer's clearly insolvent and never going to pay it,
23 anyway, why go through the -- you know, why make
24 everyone go through the motions.

25 So, that's -- that's my understanding, as well,
26 though. It's not a legal requirement that it be
27 deferred, that it -- it always has been a policy often
28 because the taxpayers normally are busy with other

1 things and, you know, have -- normally don't want to
2 have to pile their appeal on top of their bankruptcy.

3 So, that's where it came from, if I am
4 correct -- I believe.

5 MR. VINATIERI: Well, I think there's two
6 issues. First of all is -- is the substantive opinion
7 that's been rendered by your staff, which I disagree
8 with and -- and bankruptcy counsel disagrees with,
9 private counsel. From a taxpayer's standpoint, let me
10 tell you why.

11 Because there is some discussion in the
12 bankruptcy code that whether a Court, a bankruptcy
13 Court, will take jurisdiction of a tax appeal is
14 predicated -- it's discretionary and it's predicated to
15 some extent on whether there has -- what type of
16 administrative hearing and -- and due process has taken
17 place at the administrative level.

18 And then if a Court is of the opinion that
19 there has been a modicum -- and I'm just giving you what
20 I'm told by bankruptcy counsel -- but if there's been a
21 modicum of due process given, then a bankruptcy
22 Court -- the trial Court, might determine that they
23 don't want to take jurisdiction and hear the tax matter
24 in the bankruptcy case, because it's already been done
25 at the administrative level previously.

26 From a taxpayer's standpoint, obviously, to the
27 extent that I don't feel that there has been fairness in
28 the process, and that is how I feel about this specific

1 case, that we definitely want the bankruptcy attorney --
2 the bankruptcy Judge, the Court, to hear the case -- to
3 hear the whole thing, because Bankruptcy Court comes
4 into it from a different perspective than the
5 administrative staff of the State Board of Equalization,
6 or I guess the FTB, although I'm not speaking to that.

7 So, I don't want a situation on behalf of my
8 client who decides that it's a waste of time at the
9 Board of Equalization and -- and as long as we're -- you
10 know, it's questionable that if we go the wrong way
11 on -- on the Sales Tax case, that we're going to have to
12 probably declare bankruptcy, anyway, might as well just
13 go ahead and deal with it in Bankruptcy Court right then
14 and there.

15 I don't want my client to be detrimented
16 because -- because the State Board of Equalization has
17 taken a -- done some kind of -- a modicum of due
18 process, whatever that is, and so that this Bankruptcy
19 Court decides not to take jurisdiction to hear the tax
20 case.

21 And I don't -- that's why I'm -- I'm very much
22 against this. That's why I agree with what you have in
23 here, because otherwise you're throwing out another
24 issue in terms of the ability of the -- of the taxpayer,
25 in this case the bankrupt taxpayer, to have that matter
26 adjudicated in the Bankruptcy Court.

27 And I think it's a very important thing. I
28 don't know whether your people or the staff has ever

1 even looked at that --

2 MR. LAMBERT: My people?

3 MR. VINATIERI: -- from that standpoint.

4 Well, whoever -- you talked about you hired
5 some --

6 MR. LAMBERT: I don't have any people.

7 MR. VINATIERI: -- you've hired some
8 bankruptcy -- you have a new title, you know. I don't
9 know who you are now. I used to know you when you were
10 just a Property Tax guy.

11 So, anyway, that's a very important policy
12 issue. And it's a sleeper -- it's a sleeper because we
13 don't get into bankruptcy very often. But it does come
14 up.

15 MR. LAMBERT: Well, our current practice is --
16 at least with respect to State assessees, is we do not
17 honor the automatic stay. That has been for a while.

18 MS. MANDEL: Well --

19 MR. VINATIERI: That's your practice.

20 MR. LAMBERT: Well, it -- it's been there -- I
21 think it's been challenged. I think it's even gone to
22 Court on different things and they've had people going
23 back to other states and things and so far, so good.
24 And that's the opinion of the attorneys on the staff.

25 So, that is the practice right now.

26 MS. RUWART: So, Joe, just to clarify what you
27 said, there's nothing barring the Board from continuing
28 its current practice. You just think it's a better

1 policy to do it your way, which is defer them all.

2 MR. VINATIERI: Well, I'm talking from my
3 limited bankruptcy experience, which is like --

4 MS. RUWART: Very limited.

5 MR. VINATIERI: -- that (indicating). All
6 right. I've had a couple of cases, tax matters, in
7 bankruptcy, but bankruptcy counsel has always been
8 involved, and they don't understand tax, so that's why I
9 get involved as an adviser. And I am told what I just
10 told you --

11 MS. RUWART: Right. Very articulately.

12 MR. VINATIERI: And they will take the
13 position -- the bankruptcy attorney will take the
14 position that it is a vio -- a clear violation of the
15 automatic stay.

16 Now, I can't opine on that, but that is what
17 they say.

18 MR. LAMBERT: I can't, either. So, -- I'm just
19 telling you, that's -- that's the --

20 MS. RUWART: Thank you for your comment, I
21 guess that's all we can say.

22 MR. LAMBERT: -- that is the -- that's the
23 position right now with State assessesees, at least.

24 MR. VINATIERI: Okay, well --

25 MR. LAMBERT: I think with Sales Tax matters,
26 too.

27 MS. MANDEL: Yeah, it -- it is.

28 MR. VINATIERI: No, it is the Sales Tax, yes.

1 Yes, that's what happened to me --

2 MR. LAMBERT: Yeah.

3 MR. VINATIERI: -- on this other matter.

4 MR. LAMBERT: Right.

5 MR. VINATIERI: So -- so, but, in any event, if
6 you want to go that direction, then you're going to need
7 to clean this up. But the direction I'm indicating that
8 you should go is the other direction, and then you ought
9 to say Chapters 1-2 or 2-3.

10 MR. LAMBERT: So, your position is the rule --
11 the rule that's applicable to the FTB should be
12 applicable in all cases?

13 MR. VINATIERI: That's correct.

14 MR. LAMBERT: For the reasons you've stated.

15 MR. VINATIERI: That's correct.

16 MR. HELLER: A really quick response is, you
17 know, in addition to just what Bob said about our, you
18 know, current practices, my understanding is this issue
19 does come up somewhat regularly and that is a pretty
20 clear statement of bankruptcy laws to when a Bankruptcy
21 Court might take jurisdiction to decide a tax liability,
22 the actual amount of it, make its own determination.

23 And so, it's really something if we were to
24 change policy would be favoring -- allowing taxpayers to
25 make a decision to remove jurisdiction from the Board to
26 decide their tax -- like, you know, their Business Tax
27 liability, their Sales Tax liability -- and move over to
28 the -- the Bankruptcy Court and force counsel for the

1 Board now to represent the Board in another forum --

2 MR. VINATIERI: Absolutely.

3 MR. HELLER: -- right, that's not used to
4 dealing with tax matters.

5 MR. VINATIERI: Absolutely.

6 MR. HELLER: So I think --

7 MR. VINATIERI: Absolutely.

8 MR. HELLER: -- that's the countervailing
9 policy, and the reason why staff hasn't recommended it
10 so far.

11 MR. VINATIERI: Absolutely. That's what -- and
12 that's -- we all know what bankruptcy is, it's to --
13 it's to enable the debtor hopefully to come out from
14 underneath that debt and reorganize, and if not then to
15 discharge. But even then, the State has priority.

16 MR. HELLER: Yes, and so I mean --

17 MR. VINATIERI: So, I mean, the State does get
18 its due, you know. So, --

19 MR. LAMBERT: Well, I think the import of what
20 he says, you're asking the Board Members to give up
21 authority and jurisdiction.

22 MR. VINATIERI: No, we're asking to -- to just
23 follow what the Bankruptcy Code says. Enough, we've
24 talked about that.

25 MR. HELLER: Yes. No, we will take it under
26 consideration.

27 MR. VINATIERI: Yeah. Well, I know what you're
28 going to say but I -- but that's -- you know what, you

1 understand what the policy is.

2 MS. RUWART: Yes. Very clearly stated. Thank
3 you.

4 MR. VINATIERI: Okay.

5 MR. HELLER: 5011.

6 MR. VINATIERI: 5011. If -- if you haven't
7 figured it out, I was really tired one night and I had
8 nothing to do because I couldn't sleep, so I did this.

9 MR. LAMBERT: I want to thank you for that.

10 MR. HELLER: That's why we --

11 MR. VINATIERI: I thought so.

12 MR. LAMBERT: I'm glad I've given my lunch hour
13 for that.

14 MR. VINATIERI: Your lunch hour doesn't start
15 for five minutes. We're almost done.

16 On 5011(b), I -- my concern was, first of all,
17 you're talking about electronic mail all the way through
18 here. So, where it says, "The Board Proceedings
19 Division shall mail," I just said "shall provide by
20 electronic mail or otherwise," all right. So, that's
21 just consistent with -- all the way through.

22 And then modifications to a hearing summary
23 after official distribution is, "it shall be mailed or
24 otherwise provided to the taxpayer and the Department."

25 I put "within five days" -- "working days prior
26 to the Board hearing." This just happened to me.

27 MR. HELLER: Okay.

28 MR. VINATIERI: It just happened to me four

1 weeks ago.

2 MR. LAMBERT: I can tell you, though, from
3 having done hearing summaries that, you know, sometimes
4 you actually find out things that are wrong in there
5 within five days. So, you have no choice in that case
6 but to tell the Board what the right information is,
7 even if it's -- you're embarrassed and even if you might
8 be scolded for it, nevertheless you're obligated to do
9 so.

10 MR. VINATIERI: Well, all I can tell you is --
11 is in this situation -- and, you know, bad facts make
12 bad law, right? But that's kind of what we're dealing
13 with here and the staff -- the Appeals Division had this
14 information within 45 days of the hearing date. I never
15 saw a summary up until it was seven days or eight --
16 seven days, eight days, before the hearing and even then
17 I only got it because it was faxed to me because some --
18 there was a problem.

19 So my point is that there needs to be -- and
20 maybe that was just an anomaly, and if it's an anomaly,
21 you know, I hate to -- like I say, bad facts make bad
22 law. But -- but if there is a modification it needs to
23 in some way, shape or form be given to the taxpayer on a
24 timely basis.

25 Now, I put five days because I'm feeling a lot
26 of pressure when you got a hearing date on Tuesday and
27 the Board is anathema to give continuances for various
28 reasons, and then I get this hearing -- hearing summary

1 three, four days, whatever -- whatever the -- five, six,
2 seven days, whatever it is -- I'd rather have it as much
3 as possible. And it's really difficult to get this
4 hearing summary just right before the hearing and -- and
5 expect to try to -- to, you know, do the case. That's
6 the problem.

7 MR. LAMBERT: I can appreciate that, but I
8 think nevertheless the problem is some of these things
9 you find out about at the last minute. Somehow all the
10 facts come in a big torrent just before the hearing.
11 So --

12 MR. VINATIERI: Yeah, I understand. I hear
13 you. Chris.

14 MR. SCHUTZ: And the alternative is that --
15 that David Levine, whoever represents the Appeals, would
16 just verbally say it at the -- and then you find out at
17 the day of the hearing.

18 MR. LAMBERT: You find out later.

19 MR. SCHUTZ: Yeah, you find out even later, the
20 day of the hearing.

21 MR. VINATIERI: Well, can we put something in
22 here that says it should -- that "modifications to a
23 hearing summary after initial distribution shall be
24 e-mailed," -- let's make it e-mail -- "or faxed and
25 provided to the taxpayer and Department" -- you say
26 promptly, let's -- "promptly" -- let's make it as soon
27 as possible after that modified hearing summary is
28 provided, all right?

1 MR. HELLER: As soon as possible.

2 MS. MANDEL: You mean prepared.

3 MR. VINATIERI: Or as it's prepared.

4 MR. HELLER: It's provided to the Chief of the
5 Board Proceedings.

6 MR. VINATIERI: Yeah.

7 MR. HELLER: So right after it's provided to
8 the Chief of Board Proceedings, they turn around and --

9 MR. VINATIERI: It just gets sent out.

10 MR. HELLER: -- as soon as possible.

11 MR. VINATIERI: And I think that's kind of
12 maybe the way things are done --

13 MR. HELLER: Okay.

14 MR. VINATIERI: -- anyway, but let's just --

15 MS. MANDEL: I mean, you know --

16 MR. VINATIERI: Let's just put it down.

17 MS. MANDEL: It always depends what happens
18 down in the mailroom.

19 MS. RUWART: I just wanted to make a comment,
20 is --

21 MR. VINATIERI: On-line.

22 MS. RUWART: -- we -- we have similar issues in
23 Chapter 3 with regard to State assessees, and the way we
24 resolved it was to require Board Proceedings to promptly
25 distribute documents without further detail.

26 I just wanted to say that because one of our
27 goals here is to create symmetry and consistency.

28 MR. VINATIERI: Uh-huh.

1 MS. RUWART: And I'm not sure staff can promise
2 which one of those versions -- your commented version
3 here or something more similar to that would be the
4 final product. But we would consider this language, as
5 well.

6 MR. VINATIERI: And I -- look it, Board
7 Proceedings does a very good job. All right.

8 They --

9 MS. RUWART: Yeah.

10 MR. VINATIERI: And so I don't know if it's
11 Board Proceedings, I don't know if it's Appeals, I don't
12 know who it is because I don't fully always understand
13 the bureaucracy around here. All I just want to make
14 sure is that I've been heard --

15 MS. RUWART: Yeah.

16 MR. VINATIERI: -- and that everyone
17 understands that it does put a taxpayer at a
18 disadvantage and -- and it's already difficult enough
19 sometimes to have a level playing field.

20 MR. LAMBERT: Sometimes the information comes
21 from the taxpayer at the last minute. Particularly in
22 Property Tax cases where you've asked for it two months
23 ago and five days before the hearing you finally get the
24 information.

25 MR. VINATIERI: I have no empathy with the
26 taxpayer in that situation.

27 MR. LAMBERT: That's more common, in this part
28 of the --

1 MS. RUWART: Your situation, as I understand
2 it, is when the fax and maybe even the -- the written --
3 the write-up, itself, is available that it is not
4 promptly distributed when it is available.

5 MR. VINATIERI: Yeah.

6 MS. RUWART: Whenever that availability is.
7 I just wanted to say we'll take a look at it.

8 MR. VINATIERI: You all heard what I had to
9 say.

10 MR. LAMBERT: Yeah.

11 MR. VINATIERI: All right.

12 MS. RUWART: Sure. No, we appreciate it and
13 we've been dealing with it in other chapters, too.

14 MR. VINATIERI: Yeah. Okay. And I -- you
15 solved my 5029, so that's not a substantive thing.

16 MR. LAMBERT: Now we can -- any other comments
17 to be made?

18 MR. BOYD: Yeah, I have comments.

19 MR. LAMBERT: Yes.

20 MR. BOYD: Doug Boyd. Just -- on behalf of
21 cities and counties, we properly in these rules make
22 a -- a substantial deal out of notice in a lot of ways.
23 And when we get to 1807 allocations I hope we do
24 that -- that we also do that same -- pay that same
25 attention to due diligence to notice, and that includes
26 notice to cities and counties. Things like pending
27 reallocations, claims for refund and things like that.

28 MR. LAMBERT: Right.

1 MR. BOYD: Because most of us here, except for
2 Joe, of course, to whom money is irrelevant because
3 he has so much money --

4 MR. LAMBERT: No, no, no. No, he's a -- he's
5 now a Councilman with the City of Whittier.

6 MR. VINATIERI: I'm losing money, you know
7 that.

8 MR. BOYD: I know. I know. We -- every
9 once -- once or twice a month we get a paycheck and we
10 have bills and over time you build up a system whereby
11 you -- you pay the bills out of the paycheck. And if
12 you lost 25 or 30 percent of that paycheck all of a
13 sudden without any notice, it would really cause you
14 problems in paying your bills.

15 And that's the -- cities and counties have that
16 problem when they get a quarterly and all of a sudden a
17 bunch of money they counted on, they budgeted, they put
18 in their budget, Joe and the City Council approved
19 it --

20 MR. VINATIERI: The City of Whittier.

21 MR. BOYD: -- and it's just -- it's just not
22 there. And so they need to know -- they need at least
23 advance notification of these things.

24 MR. LAMBERT: We have a suggestion.

25 MR. BOYD: Good.

26 MS. RUWART: Yes.

27 MR. HELLER: Yes, and -- would you like to
28 continue or time to stop?

1 Bradley Heller for the Legal Department again.
2 And I -- I spoke with Doug earlier -- actually later
3 last week. And he raised the same concerns and I was
4 able to do a little investigation, as well, so that I
5 can properly respond. And a couple of things, I did
6 check in and -- and I think staff on our side thinks
7 that there is something we can do to improve notice of
8 potential reallocations that might affect your
9 distributions.

10 MR. BOYD: That would be wonderful.

11 MR. HELLER: We don't necessarily have
12 something right this minute that we can provide and
13 we're trying to get our State -- local and district
14 folks to somehow -- to figure out how best to coordinate
15 with our refunds folks who are processing these claims
16 for the taxpayer, to communicate when there's -- you
17 know, figure out what threshold amounts might be
18 appropriate and figure out what's a good process for
19 those two groups to communicate so that local and
20 district can then communicate with you that by the way,
21 there's a big -- something that you'd be interested in,
22 or whatever. Whatever kind of things we identify to be
23 important.

24 And then on the other side I did check into the
25 process for getting this implemented and also for making
26 sure that the formal appeal procedures, themselves, have
27 the notice requirements that are appropriate for that,
28 and the detail that you're talking about.

1 And I checked with our Board Proceedings staff
2 and -- and Business Taxes Committee and we're -- at
3 least as of right now, and I -- it's not in stone,
4 but -- but basically as of right now the -- one of the
5 number one things on the list of items to be presented
6 to the new Chair of the Business Taxes Committee when
7 they take office in January will be rulemaking on
8 Regulations 1807 and 1828. And at that time the whole
9 process will be open for review and improvement, and
10 also we can then look at all the notice provisions, as
11 well. And if there's things that we recognize during
12 that process that need to be -- affect what's going on
13 in these rules -- with right now they just reference
14 that and leave that process really intact for the
15 moment. Then we can pick the revisions to these as they
16 move forward or amend them if they become regulations by
17 then so that they coordinate with whatever we change
18 next year with the -- with the allocation appeals.

19 And I think if we can do that maybe we -- as a
20 whole, overall, we can start with the front end of
21 making sure that you're aware of the allocations that
22 you might want to appeal and then providing clear
23 process for you to go ahead and then appeal it and get
24 to the Board --

25 MR. BOYD: That's great.

26 MR. HELLER: -- on the issues. So we do think
27 there's going to be a way to address that.

28 MR. LAMBERT: We're going to follow through on

1 that and see if there -- the best way to do that.

2 MR. BOYD: Thank you.

3 MR. HELLER: Absolutely.

4 MR. BOYD: It would really help with budgeting.

5 MR. HELLER: Yes, we a hundred percent agree.

6 If we were budgeting we'd want the same information.

7 MS. RUWART: But -- so we wouldn't put it in

8 this --

9 MR. BOYD: Yeah, I --

10 MR. LAMBERT: It's not necessarily the best

11 vehicle right at this point.

12 MR. BOYD: Okay.

13 MR. HELLER: I think -- Mr. Kamp, did you have

14 one or more comments?

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1 MR. KAMP: We have a few.

2 On page 1 through 3 of a letter distributed
3 today, we have some suggested revisions for Chapter 2.
4 They all relate -- we reviewed everything in Chapter 2
5 and we think there's an inconsistent use of the word
6 "staff."

7 I mean we have -- you see references in the
8 description, descriptions of -- in a very discrete way
9 of what the staff is and then then the entire entire
10 staff of the Board and it isn't something that you just
11 take a fresh look at something you'll see that it's
12 inconsistent.

13 On page 3 we make the suggestion you basically
14 use the "Board staff" in all instances where there is
15 not a five-member Board role, and replace references to
16 Appeals Division with "Appeals staff." And examine the
17 appropriateness of any delegation of staff that may have
18 transferred into the Rules for Tax Appeals.

19 We also believe, that is the first bullet
20 point,

21 "Explicitly inform the taxpayer of the
22 phases of the earlier appeals process and how
23 to contact the Board during these phases,
24 without being overly prescriptive."

25 MS. MANDEL: What are you -- I know, I just
26 don't know what he means.

27 MS. RUWART: Which segment of your comment are
28 you referring to? What page?

1 MR. KAMP: Page 3 of the letter.

2 MS. MANDEL: No, I see the bullet point, I just
3 didn't -- I haven't read Chapter 2 since right before
4 that September Board meeting.

5 MS. RUWART: I guess my question is, are you
6 proposing to expand the scope of Chapter 2 to take in
7 actions that are -- occur even earlier in the appeals
8 process than these are currently scoped for?

9 MR. KAMP: This is just noticing the taxpayer
10 of the existence of these actions, yes.

11 MR. HELLER: Well --

12 MS. RUWART: So, in other words, just to make
13 sure I understand, in Chapter 2, in fact, in all these
14 rules generally, we've started at a certain point in
15 time.

16 MR. KAMP: Yeah.

17 MS. RUWART: And you think that at least in
18 some general sense steps that are earlier than that
19 certain point in time should be referenced in these
20 regulations?

21 MR. KAMP: Yes, in terms of notifying taxpayers
22 of their existence, yes.

23 MR. LAMBERT: Like what specifically?

24 MR. KAMP: Well --

25 MS. RUWART: If we could get some more detail
26 on exactly what this might be?

27 MR. LAMBERT: Give more detail off-line.

28 MR. KAMP: Off-line, all right.

1 MS. RUWART: Yes.

2 MR. HELLER: That's so good.

3 Real quickly now, the current rules -- this is
4 the foundation, pick it up from the filing of the
5 petition for the claim for refund, see, that's the
6 initiation of the process.

7 MR. LAMBERT: Right.

8 MR. HELLER: We don't go into any detail of
9 every act that is done by somebody in like a petition
10 section itself, is that more --

11 MR. KAMP: Yes.

12 We don't want to be overly prescriptive, we
13 just want the taxpayers to be aware of what's going on
14 and how they can contact the Board.

15 MR. HELLER: I think --

16 MS. MANDEL: Without -- okay, without getting
17 into all of the stuff that's not appropriate for
18 regulations and that that --

19 MS. RUWART: Or these regulations?

20 MS. MANDEL: -- right, that restricts how the
21 Board's going to set up its internal operations and
22 other stuff.

23 MR. HELLER: We will -- we definitely want to
24 see that specific language.

25 MR. KAMP: Okay.

26 MR. HELLER: We did -- just a thought too, we
27 did actually include more details than is in the current
28 draft originally and we actually stepped back from them

1 because we felt like it was way over detailed at some
2 point in terms of the regulations.

3 This may not apply to what you're suggesting,
4 just a thought, and we are considering for that
5 information and we didn't just delete it, we took it out
6 and we're planning to create publications that will
7 accompany these regulations.

8 So, let's say you're the taxpayer and you file
9 a petition, we will send you the, "So You Filed a
10 Petition." It's going to get assigned to the petition
11 section.

12 MR. KAMP: Okay.

13 MR. HELLER: Something like that.

14 At least we're hoping to prepare that as we
15 complete these and see where we need to fill any gaps.

16 So, that would be also an idea.

17 MR. KAMP: Okay.

18 MR. HELLER: We're definitely looking at
19 whatever comments you have.

20 MR. KAMP: That's it for us.

21 MR. LAMBERT: Okay, is that it?

22 Any more?

23 MS. MANDEL: Well, then the only question then
24 becomes what winds up -- how you wind up determining
25 what issues remain to be decided.

26 MR. LAMBERT: Right.

27 MS. MANDEL: By what people and what people are
28 actually going to --

1 MR. VINATIERI: What day that is that?

2 MS. MANDEL: The Board meeting on this?

3 MR. VINATIERI: Yes?

4 MS. MANDEL: November 21st.

5 MR. HELLER: November 20th.

6 MS. MANDEL: 20th?

7 MR. SCHUTZ: 20th.

8 MR. HELLER: Okay, it will be the 20th.

9 I have three cases that day.

10 MS. CASAZZA: Will we have the interested
11 parties here to see the next draft that comes out prior
12 to the November 20th.

13 MR. HELLER: Sure. Real quickly, to wrap up,
14 this is Bradley Heller with the Legal Department again.

15 As the process goes from here, right now the
16 current direction the staff has from the Board is
17 re-present the rules to them at the November 20th Board
18 meeting, I believe is the date, there is two days
19 scheduled for the meeting, but it will probably be on
20 the 20th.

21 And so staff will be preparing updated drafts
22 of all of the rules, incorporating some of the comments
23 that we have received.

24 And then we'll be issuing those. They'll be
25 provided to the public at least as early as when the
26 Public Agenda Notice goes out for that meeting. So,
27 they'll be available on the website at that point. If
28 we can get them out earlier, we will, but that's

1 definitely the drop dead date for them come out. So,
2 you'll see them then.

3 We will be also planning on updating our
4 responsive comments to you. So, we'll have the
5 additional comments that we received in writing for
6 today's meeting and today, some of the comments that we
7 received in the discussion today as well.

8 And then as far as, you know, what that exact
9 form of that is, we'll have to determine that.

10 And then as far as what the Board will do, the
11 Board could decide to have it rescheduled or give us
12 whatever other guidance they want at that meeting as
13 well.

14 MS. MANDEL: Well, but if somebody is going to
15 present an alternative to the Board under the interested
16 parties process that the Board is going to be voting on,
17 I mean that was how -- when are those coming in and, you
18 know, people would be coming to the Board to present
19 their -- I mean it's not -- staff doesn't -- you know, I
20 mean if someone doesn't show up and present their
21 alternative language unless somebody decides to say that
22 they want to make that motion that alternative language,
23 but --

24 MR. HELLER: Real quickly, if somebody wants to
25 make sure that either suggested language for a
26 regulation or a particular comment is seen by all of the
27 Board Members and considered by them, they can go ahead
28 and send it to Diane Olson, the information's on the

1 notice for this meeting. And she'll have it distributed
2 to the Board Members.

3 They'd also -- if they wanted to be -- to
4 present it to the Board Members at the meeting on the
5 20th, they can submit it for that meeting and it will be
6 distributed for that meeting. Or they can appear and
7 submit written comments or testify in support or present
8 their comments at that time.

9 As far as whether a particular comment or
10 suggestion is going be incorporated into the language
11 that the staff recommends to the Board on that date, I
12 cannot tell you what the specifics [*|of] how that
13 will go. And at this point we're working on that right
14 now.

15 MS. CASAZZA: Sounds good.

16 MR. HELLER: Thank you all very much for coming
17 today.

18 And once again the information to contact
19 myself and Diane Olson is on the notice. It's also on
20 our website.

21 You can contact me at any time you'd like to
22 provide additional comments or thoughts that come to
23 mind and you can submit any written comments as well for
24 my consideration or the Board Members' consideration and
25 also alternatives, if you'd like.

26 And, once again, if we get information by
27 November 9th and it's something that we can consider and
28 possibly incorporate into the information -- the draft

1 that will be presented to the Board Members at the 20th,
2 the meeting on the 20th, and any comments that come in
3 after that, they can certainly be considered and
4 presented to the Board, but there won't be time for us
5 to incorporate into the language presented to the Board.

6 Thank you very much for coming today again and
7 have a good afternoon.

8 MR. VINATIERI: Please note on-line that we're
9 only twelve minutes into the lunch hour.

10 MS. MANDEL: The normal way that the interested
11 parties process works is that there is a date by which
12 people are to submit alternative language to what is is
13 in whatever staff is going to propose. And then that is
14 in a matrix for the Board. That's what would happen at
15 a committee.

16 And then the proponent of that language would
17 show up and tell the Board why they think that that
18 language should be adopted in lieu of what the Board
19 staff is presenting and Board staff's view on that
20 language would be, "It's wrong, it doesn't make sense,
21 it's, you know, blahdy, blahdy, blahdy," whatever the
22 reason was for not adopting it in the first place.

23 And then the Board votes up or down. Now,
24 that -- you know, there is always -- the Board is
25 limited -- there is often limited, you know, issues for
26 the Board to decide if they're going to decide anything
27 and again if somebody doesn't, you know, show up to
28 support their -- what they're proposing, that's, of

1 course, you know, another negative.

2 But normally -- sometimes things come out of
3 the interested parties process and everybody agrees on
4 everything or they decide, "You know what, it's not --
5 it's not going to break my heart if things go forward
6 the way they are in what the staff proposal is. And I
7 am not going to make an issue of it. It's not worth it
8 for a variety of reasons or whatever to put that forward
9 to the Board. And I understand everything's staff
10 saying, I'm just going to live with it."

11 And then the thing goes forward basically as a
12 consent item, in one sense, because it comes forward and
13 staff says everybody agrees. That's -- you know, that's
14 the usual kind of committee process.

15 But it may be that, you know, there is nothing
16 in particular off this that is going to come forward and
17 on -- one alternative that somebody might propose on the
18 gnarly things is, you know, drop it. That might be
19 somebody's alternative.

20 The Board might say, "I'm not going to drop
21 it."

22 But normally that's in the interested parties
23 process what we wind up seeing. Now, maybe other people
24 have anticipated something different at this interested
25 parties process, but it's just what the Board -- if the
26 Board -- I mean the idea at this meeting would be that
27 the Board would be voting to send regulations into the
28 formal rulemaking process for publication.

1 So, if somebody has different words rather than
2 just a statement of concept, different words are easier
3 to vote on usually than statements of concept.

4 MR. LAMBERT: I agree.

5 MR. SCHUTZ: And you just want to say for the
6 gnarly issues, I mean, it's almost like for alternatives
7 the rules for everything else and then -- or do you want
8 to see the language for all of the little -- I mean, the
9 smaller things?

10 MS. MANDEL: Well, you know, it's --

11 MR. VINATIERI: It's not small.

12 MR. SCHUTZ: Some are smaller.

13 MS. MANDEL: It may be that -- I may not -- may
14 or may not want to see language, it's just that --
15 it's -- that's the process that we have, the normal
16 process that we use in committees.

17 We have people who have never participated in
18 that normal process. Joe, since he's sitting here, may
19 have five things, one of which gets incorporated into
20 the rules. Joe may decide that the other three or four,
21 having heard the discussion, he's not going to make an
22 issue of. He may not send a letter, he may not testify
23 on them. That's --

24 MR. VINATIERI: If you just say the right
25 thing, Joe's not going to say anything.

26 MR. LAMBERT: There is the rub.

27 ms. MANDEL: But if what we get for the Board
28 meeting -- somehow it would be nice to know in advance

1 of the day we walk into the Board meeting whether there
2 is going to be an issue or not on something as big as
3 this.

4 MR. SCHUTZ: Are you suggesting like a drop
5 dead date to propose language if you haven't done so
6 already?

7 MS. MANDEL: It's usually kind of what we have.

8 MS. CASAZZA: Is that hard to do when the
9 revised staff draft doesn't come out until,
10 realistically, ten days before the hearing?

11 MR. HELLER: Pretty much -- Bradley Heller
12 again.

13 MR. LAMBERT: When in November?

14 MR. HELLER: November 9 is the last day that we
15 can incorporate something into a draft of the rules that
16 we'll be providing.

17 So, to the extent that we need a drop dead date
18 for inclusion, that's certainly it.

19 But as far as a date for being presented to the
20 Board Members, if -- people could submit things up to
21 the day of the hearing. They will be submitted to the
22 Board Members and they can sign up to testify on that
23 day.

24 MS. MANDEL: Right, but if they have actual
25 useful -- if it's important enough that they think it
26 should be in --

27 MR. LAMBERT: Submit the language --
28 alternative language.

1 MR. KAMP: Are you suggesting that people could
2 submit language to your office on or before November 9?

3 November 9 is the PAN deadline?

4 MR. HELLER: It is.

5 MR. LAMBERT: We'll take that into
6 consideration at that point.

7 MS. RUWART: Our ability to --

8 MR. LAMBERT: Look at it and analyze it.

9 MS. RUWART: -- incorporate and review it.

10 MR. LAMBERT: That's about it.

11 Otherwise it goes raw to the Board Members.

12 MS. CASAZZA: Get it in as soon as you can.

13 MR. HELLER: But we don't have a date, because
14 we'll look at it if comes in after -- even if it comes
15 in the day of the Board meeting and it's the thing that
16 we need to be doing, well, we're going to look at it.

17 So, it's --

18 MR. LAMBERT: But if it's -- at this late date
19 in this process, if it's important to you, we would hope
20 that would you take your best stab in coming up with the
21 precise changes that need to be made throughout the
22 document.

23 MR. VINATIERI: So, if I disagreed on the
24 bankruptcy issue.

25 MR. LAMBERT: Right.

26 MR. VINATIERI: And said 2, 3 and 4, then I
27 should send that to you?

28 MR. LAMBERT: Makes it easy to vote on, if

1 nothing else, right?

2 MS. MANDEL: Because, you know, otherwise when
3 it came last time it has the appearance of everybody
4 agrees with everything, which causes the Board to treat
5 it --

6 MR. VINATIERI: Differently, like a consent
7 deal.

8 MR. LAMBERT: So, yeah, you ought to have it in
9 the form that it can be voted on if it's important.

10 MR. VINATIERI: So, are you going to turn me
11 down on that one?

12 I'll send you a letter right now.

13 MR. HELLER: We would like to take it --

14 MR. LAMBERT: We don't necessarily have the
15 ability to say yay or nay right now.

16 But I think you ought to assume that it's not
17 going to change and then submit your alternative
18 language.

19 That would be the prudent thing to do.

20 MR. VINATIERI: I like when you talk like that.

21 MR. SCHUTZ: There are also -- well, they're
22 prior to this meeting that have alternative language for
23 different things that didn't get incorporated, we just
24 would say, well -- is that going to be part of the
25 matrix?

26 MS. MANDEL: You know, I sent them a lot of
27 language changes and we haven't sat down on all of them,
28 but most of them were editorial.

1 But -- I mean usually what happens at the end
2 of this process is -- is somebody has been sort of
3 keeping track and then it's do you want to take that to
4 the Board and force them to vote on that or not?

5 Just because somebody made some language
6 suggestion doesn't -- you know, we do have -- we do have
7 whatever this thing -- where is it -- this matrix
8 (indicating) which, you know, supposedly covered pretty
9 much everything that people said.

10 MR. VINATIERI: And the reality is you've done
11 a very, very, very, very, very good job taking all that
12 stuff and synthesizing it down to where it's at.

13 MS. MANDEL: Presumably, at this point, you're
14 back to the people who have some issue which --

15 MR. LAMBERT: If you don't comment now, I think
16 we're going to assume you've been satisfied by the
17 changes and the dialogue that occurred up till now.

18 I think that's a safe assumption. So, yeah, if
19 they still -- if they made a complaint four meetings ago
20 and it hasn't been addressed yet, they better renew it.

21 MR. KAMP: Well, are you going to -- there's I
22 nobody from the California Tax Reform Association
23 here -- you can argue why they're not here or should be
24 or whatever, the deadlines you are putting out, will
25 somebody communicate to them?

26 MR. LAMBERT: Yeah, we -- I think that's why he
27 gave me the language that he did now because I told him
28 right after the last meeting.

1 MR. KAMP: The November 9?

2 MR. LAMBERT: -- all editorial comments --

3 MR. KAMP: The November 9 deadline, just make

4 sure they know that.

5 MS. RUWART: If you would like -- well, anybody

6 else?

7 MR. LAMBERT: I'm not going to track him down

8 in Malaysia or --

9 MS. RUWART: I just want to clarify, staff will

10 contact Lenny Goldberg and Cal-Tax.

11 You kind of waved your hand and said, "And

12 anybody else."

13 I don't know who that is.

14 MR. KAMP: I don't know either, to be honest

15 with you.

16 MS. CASAZZA: Well, the interested parties that

17 you list in your matrix, they have made comments. It

18 might be fair to them to let them know what the -- what

19 the deadlines are.

20 MR. LAMBERT: Yes.

21 MS. OLSON: To talk about Marcy -- and I do

22 interested parties meetings with business taxes and

23 stuff and we can do a notice to people and notify

24 them -- the same people that we notified for this

25 meeting -- let them know that we have a after deadline

26 of November 1st to submit comments.

27 MR. LAMBERT: For staff to take it into

28 consideration.

1 MS. OLSON: To take it into consideration.

2 MR. LAMBERT: Yeah, that's fair, that would be
3 good.

4 MS. OLSON: To incorporate the language?

5 MR. LAMBERT: That's great.

6 MS. OLSON: I can provide Brad and Carole, but
7 business taxes, when they do have alternatives that the
8 they're showing that the Board Members are able to vote
9 on is what Marcy's talking about.

10 I can show them.

11 MS. RUWART: We're more than --

12 MS. MANDEL: But the e-mail alternatives are
13 only if somebody -- I mean, people walk away from a lot
14 of stuff whether they think what staff has done is
15 absolutely right or not.

16 MR. LAMBERT: That's a great idea.

17 MS. MANDEL: People do walk away from things
18 that they feel strongly about because they don't --

19 MS. RUWART: Sure.

20 MS. MANDEL: -- to take it to the Board.

21 MR. SCHUTZ: November 1st, that means staff's
22 new version won't be ready yet?

23 You just want to refer them to any differences
24 between the September 27th version or is staff going
25 back and definitely coming out with their new version
26 after the November 1st deadline, so, do we tell -- if we
27 tell them, "Look at the September 27th version."?

28 MS. RUWART: My preference would be the

1 September 27th version.

2 And I have already incorporated some comments,
3 but it is a lot easier for me to all work from the
4 September 27th version --

5 MR. LAMBERT: Okay.

6 MS. RUWART: -- than to have rolling versions.

7 And, of course, where there's discrepancies,
8 that's part of staff's job to attempt to resolve them
9 when you have competing comments.

10 But since those are already posted, that would
11 be the best way to do it.

12 MR. LAMBERT: Okay.

13 MS. RUWART: Is there anything else?

14 MR. LAMBERT: Then this meeting is adjourned.

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on October 18, 2006 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages, pages 1 through 18, pages 41 through 59, pages 89 through 99 and pages 109 through 129 constitute a complete and accurate transcription of the shorthand writing.

Dated: October 22, 2006.

BEVERLY D. TOMS
Hearing Reporter

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I, JULI PRICE JACKSON Hearing Reporter for the California State Board of Equalization certify that on October 18, 2006 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages, pages 19 through 40, pages 60 through 88, pages 100 through 108 and pages 130 through 146, constitute a complete and accurate transcription of the shorthand writing.

JULI PRICE JACKSON
Hearing Reporter